



CECILIA SOLEDAD  
VARGAS

ADELA PÉREZ DEL VISO  
(Directors)

EDITORIAL TOMÁS JOFRÉ

# WOMEN'S RIGHTS IN CONTEXT

**CECILIA SOLEDAD VARGAS**

**ADELA PEREZ DEL VISO**

**(DIRECTORAS)**



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# **WOMEN'S RIGHTS IN CONTEXT**



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Vargas, Cecilia Soledad

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**Editorial**

**Tomás Jofré**

**Cecilia Soledad Vargas - Adela Perez del Viso**

## WOMEN'S RIGHTS IN CONTEXT

**Authors in alphabetical order:**

**Aguero Carla Maria Amelia**

**Alva Benavides, Milagros Marisol**

**Álvarez, Gabriela Fernanda**

**Burgos, Débora María Agustina**

**Cáceres Bignotti, Karina Antonella**

**Chacón, Laura Melina**

**Costanzo, María**

**D'Agata, Valeria**

**Díaz, María Jimena**

**Frick, Julieta**

**Giacomaso, Rocío**

**Marino, Juan**

**Montenegro Stoianoff, Victor Enrique**

**Quevedo, Claudio Agustín**

**Robles, Lucrecia**

**Vargas, Cecilia Soledad**



# LISTA DE AUTORES

## CHAPTER ONE: HUMAN RIGHTS FOR WOMEN AND THE PRESS

**Díaz, María Jimena**

## CHAPTER TWO: THE RIGHT OF WOMEN TO FREEDOM OF SPEECH

**Montenegro Stoianoff, Victor Enrique** – Abogado e Investigador independiente en filosofía del derecho - Corrientes Capital.

**Cáceres Bignotti, Karina Antonella** – Abogada - Corrientes Capital.

## CHAPTER THREE: EVOLUTION OF WOMEN'S RIGHTS AND INTERNATIONAL CONVENTIONS

**Giacomaso, Rocío**

## CHAPTER FOUR: POSITIVE ACTIONS AND INTERNATIONAL HUMAN RIGHTS FOR WOMEN

**Frick, Julieta** – Abogada, Diplomatura en Inglés Jurídico desde la perspectiva de Derechos Humanos - Ciudad de Rio Grande, Tierra del Fuego.

## CHAPTER FIVE: THE HAGUE CONVENTION ON CHILD ABDUCTION AND WOMEN'S RIGHTS

**Costanzo, María** – Abogada, Maestranda en Derecho del Trabajo y Relaciones Laborales Internacionales UNTREF, Diplomada en Riesgos del Trabajo, Diplomada en el proceso de transmisión sucesoria, Diplomada en Inglés Jurídico para Derechos Humanos e instrumentos internacionales U.C.C. - Provincia de San Luis.

## CHAPTER SIX: WOMEN AND THE RIGHT TO FOOD

**Marino, Juan** - Perito Mercantil y Bachiller en Ciencias Comerciales, Diplomado en Derecho Parlamentario, Experto Universitario en Técnica Legislativa/Normativa, Estudiante de Abogacía y Lic. en Gestión Parlamentaria - Ciudad de Gral. Madariaga, Provincia de Buenos Aires

## CHAPTER SEVEN: WOMEN AND THEIR HUMAN RIGHT TO EDUCATION

**Alva Benavides, Milagros Marisel** –

**Burgos, Débora María Agustina** – Estudiante en la Facultad de Filosofía y Letras; Facultad de Derecho y Ciencias Sociales, Universidad Nacional de Tucumán. Ciudad de San Salvador de Jujuy, Jujuy.

## CHAPTER EIGHT: CEDAW AND ITS IMPLEMENTATION IN DOMESTIC LEGISLATION IN ARGENTINA. THE 26487 ACT

**Quevedo, Claudio Agustín** – Diplomado en Inglés Jurídico para los Derechos Humanos e Instrumentos Internacionales, Estudiante para Martillero público y Corredor de comercio. Ciudad de San Luis, San Luis.

**Álvarez, Gabriela Fernanda** – Traductora pública nacional de inglés, Diplomada en Localización de Contenidos Multimedia, estudiante de la Especialización en Traducción Científica y Técnica en la Facultad de Lenguas, UNC.

**D'Agata, Valeria** - Licenciada en Turismo y Hotelería, Profesora de Turismo con postgrado en Turismo Rural, Diplomada en Ciencias Penales, Estudiante de abogacía en la Universidad Católica de Cuyo. Ciudad de San Luis, San Luis.

## **CHAPTER NINE: WOMEN AND THE RIGHTS OF NATIVE COMMUNITIES**

**Robles, Lucrecia** - Profesora de Inglés en Jujuy. Centro examinador Path Examination.

## **CHAPTER TEN: CONVENTIONS THAT MUST BE SIGNED IN THE FUTURE. AN UTOPIAN VIEW ON WOMEN'S RIGHTS**

**Vargas, Cecilia Soledad** – Profesora de Inglés, Licenciada en Gestión Educativa, Experta Universitaria en la Enseñanza de Educación Superior, Diplomada en Inglés Jurídico para los Derechos Humanos e Instrumentos Internacionales, Experta Universitaria en Metodologías Activas, Autora del Libro The Magic Tree Mail Box, Estudiante de la Especialización en Investigación Educativa y Maestranda de Estudios Literarios de Frontera, UNJu – Ciudad de Palpalá, Jujuy.

## **CHAPTER ELEVEN: PUBLIC POLITICS TAKEN BY ARGENTINIAN STATE WITHIN TEMPORARY SPECIAL MEASURES PROVIDED BY ARTICLE FOUR OF THE CEDAW.**

**Chacón, Laura Melina** – Abogada, Escribana, Mandatario del Automotor, Diplomada en las Relaciones Familiares del nuevo Código Civil, Diplomada en el proceso de transmisión sucesoria: implicancias y relaciones, Diplomado de Inglés Jurídico para Derechos Humanos e Instrumentos Internacionales. Ciudad de San Luis, San Luis.

## **CHAPTER TWELVE:**

**Agüero, Carla María Amelia** - abogada con perspectiva de género, Estudiante de una Especialización en Derecho Laboral y del Profesorado en Educación Universitaria. Ciudad de San Juan, San Juan.



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# WOMEN’S RIGHTS IN CONTEXT

## Prologue

During the harsh times of 2020, a group of students joined the “*Diplomatura en Inglés Jurídico para Derechos humanos*” at *Universidad Católica de Cuyo sede San Luis*.

For those brave ones, registering as students implied a great effort, enduring the need to study while there was isolation, risk of illness and sadness for the ones that unfortunately were catching Covid 19, all around.

As a result, after studying the whole material of the course, the authors have produced these outstanding chapters related to Women's rights.

We want to thank ***Universidad Católica de Cuyo sede San Luis*** for this great opportunity to express our ideas.

As the young Malala Yousafzai has stated, “One child, one teacher, one book, one pen, can change the world.” We believe that we may contribute to change the world with this collaborative work.





## CHAPTER ONE. HUMAN RIGHTS FOR WOMEN AND THE PRESS<sup>1</sup>

*“In every equation of development, gender sits at the center. So, my work is to remind everyone of what gender equality means and how we would all suffer from unequal development if gender is displaced.”<sup>2</sup>*

*Moraa Obiria, journalist, Nation Media, Kenya*

### 1. Introduction

Freedom of speech is a Human Right, vital to the well-functioning in a fair, equal and nondiscriminatory society. There is a persistency of gender stereotypes and discrimination against women in the media and press. Although in many countries women play a central role in broadcasting companies, in the media the story is fairly different when we talk about high positions, which are still nowadays dominated by males.

The marginalization of women as regards their position as professional workers is parallel to the news content present in their jobs. There exist obstacles and different forms of violent attitudes towards women working as journalists, without taking into account that women face the same difficulties and take the same risks as their male partners. Similarly, they also face gender risks due to the fact of being women.

It still remains as one of the main challenges in our times to promote a balance, in order to reach a state of gender equality for women in the media. Together with this present imbalanced portrayed of women, we take into account the problem of violence and degradation of women, in the media, that must not be taken as isolated events but as a global problem, within which advertising is

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<sup>1</sup> Author of this chapter: María Jimena Díaz. October 2020.

<sup>2</sup> “Equality Now”: “Why Press freedom matters for gender equality”. 03 May 2020. Available at: [https://www.equalitynow.org/press\\_freedom\\_gender\\_equality#:~:text=%E2%80%9CIn%20every%20equation%20of%20development,development%20if%20gender%20is%20displaced.%E2%80%9D](https://www.equalitynow.org/press_freedom_gender_equality#:~:text=%E2%80%9CIn%20every%20equation%20of%20development,development%20if%20gender%20is%20displaced.%E2%80%9D)

included. This essay focuses on the legal path and historical measures undertaken, by States parties, on gender stereotypes in the media, as well as examples of how the persistence of gender inequality prevails as an obstacle in many countries. All of these tribulations, show an urgent need for development on these concerning areas.

We have decided to begin my chapter with a quotation. In fact, I was doing some research on the topic. While I was reading, I accidentally came across the voice of this journalist, Moraa Obiria. So, I said to myself: a voice of expertise, a voice from the media and a field worker!! That is why I have chosen her quote.

Unknown for me, the first time I read it I kept thinking and rethinking about equality and dignity in our lives. It is not about making a parallelism between men and women, it is not a question of competition, it is a matter of dignity, of balance in every different field and in the media, of access to the same opportunities, and it is about having voice and vote, in every matter for everyone.

It is a global question and an urgent need to reach the elimination of discrimination, a need that complies us all, women and men, because the entire society will be benefited from living in a fairer world.

## **2. Seneca Falls Convention and the Beginning of the Struggle.**

To begin with the development of this task, I will start by taking a close look to the Seneca Falls Convention, where ordinary people joined together under the same purpose: they wanted to discuss social, civil and religious rights of women, rights that had been ignored or unnoticed systematically until that day.

## 2.1 Seneca Falls Convention

We go back in history to the year 1848, human rights had not been neither declared nor defined yet, but the roots for a better life and more just societies placed a landmark at Seneca Falls Convention.

## 2.2 A crucial event? Let us analyse the facts...

It was the first Women's Convention in the United States that many decades later gave the right to vote to women. It was the major turning point in the Women's Rights movement. Later on, the campaign continued and leaders fought for women's rights.

We are talking about media, so it is interesting to see what reaction newspapers had, at those times, when they covered Seneca Falls Convention, such an unprecedented event. Obviously, there were supporters as well as opponents to its objectives.

An editor of The New York Tribune, tried to reflect the opinion of many people at the time. He was really doubtful with the question of giving the right to vote to women but he wisely declared that "all men are created equal," he argued, they must endorse even the right of women to vote:

*"When a sincere republican is asked to say in sober earnest what adequate reason he can give, for refusing the demand of women to an equal participation with men in political rights, he must answer, None at all. However unwise and mistaken the demand, it is but the assertion of a natural right, and such must be conceded."*<sup>3</sup>

Note here the importance of this Convention as the starting point of women's rights and even though press hadn't a firm position, they recognized women and men as equals, as human beings.

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<sup>3</sup> Notes from the Tribune taken by Alma Lutz, "Greeley," Alma Lutz Papers, Vassar College.

### **2.3. United Nations Commission on the Status of Women**

The Commission on the Status of Women (CSW) is the principal and largest global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women.

A functional commission of the Economic and Social Council (ECOSOC) was established by ECOSOC resolution 11(II) in 21 June 1946.

The CSW is instrumental in promoting women's rights, documenting the reality of women's lives throughout the world, and shaping global standards on gender equality and the empowerment of women.<sup>4</sup>

This Commission hosts multiple programs, throughout the year, and makes efforts to sketch what gender standards would imply and how equality should be promoted by the states. The reports they receive are the basis to accelerate the realization of gender equality and empowerment of women.

The work methods are established by ECOSOC resolution 2015/6, and they mark what the commission is expected to do in each session.

### **2.4. Guidelines CSW**

According to the United Nations Women's website, these are the session's guidelines:

- *Convenes a ministerial segment to reaffirm and strengthen political commitment to the realization of gender equality and the empowerment of women and girls as well as their human rights, and to ensure high-level*

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<sup>4</sup> U.N. Commission on the Status of a Women, available at: <https://www.unwomen.org/en/csw>

*engagement and the visibility of the deliberations of the Commission, including through ministerial round tables or other high-level interactive dialogues to exchange experiences, lessons learned, and good practices;*

- *Engages in general discussion on the status of gender equality, identifying goals attained, achievements made, and efforts under way to close gaps and meet challenges;*

- *Convenes interactive expert panel discussions and other interactive dialogues on steps and initiatives to accelerate implementation and measures to build capacities for mainstreaming gender equality across policies and programs;*

- *Considers one priority theme, based on the Beijing Declaration and Platform for Action and the outcome of the 23rd special session of the General Assembly and linkages to the 2030 Agenda for Sustainable Development;*

- *Evaluates progress in implementing agreed conclusions from previous sessions as a review theme;*

- *Discusses emerging issues, trends, focus areas, and new approaches to questions affecting the situation of women, including equality between women and men, that require timely consideration;*

- *Considers in closed meeting the report of its Working Group on Communications;*

- *Agrees on further actions for the promotion of gender equality and the empowerment of women by adopting agreed conclusions and resolutions;*

- *Contributes gender perspectives to the work of other intergovernmental bodies and processes;*

- *Reports on the aspects relating to gender equality and the empowerment of women of the agreed main theme of the Economic and Social Council, in order to contribute to its work; and*

- Celebrates International Women’s Day on 8 March, when it falls within its session.

Following the timeline, we find the CSW influence in promoting equality between men and women, by giving a place to discuss different approaches towards gender balance and taking into account lines of action to contribute with the issue.

### 3. Universal Declaration of Human Rights



Source of the image: UN Webpage<sup>5</sup>

We go to the year 1948 when the Universal Declaration of Human Rights was signed. “*Human rights are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being*” (Sepulveda et al., 2004) No distinction between men and women, we are all human beings so we shall enjoy the same rights without discrimination, based on this simple condition, humanity. They are universal, so they must be respected worldwide, without discrimination. We go a step forward. We are going to devote our attention particularly to freedom of Expression.

<sup>5</sup> UN Webpage, available at: <https://www.un.org/>

The Declaration contains all the rights women are entitled to, together with their freedoms; we must bear in mind that later on we are going to discuss this question of freedom.

### **3.1 UDHR Article 19**

Article 19 suggests a state of access to a Freedom of Expression in which gender, race, and other identity differences do not determine the enjoyment of the right.

Article 19 states the following:

***“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>6</sup>***

The right to freedom of expression is closely connected with media freedom though is not frequently associated with it. Media freedom struggles often occur when there is a lack of considerations of the freedom of expression of the audience the media intend to serve. The question here lays on whether there is gender balance or not. As this work is about the different paths towards gender equality and balance in media, probably, it would not be expected to find here the issue of restricting freedom of speech. But the point of view to face this question is the B side, is how media promotes discriminatory models that jeopardize gender integrity, sometimes portraying women in a degrading way and undermining her rights by showing women stereotypes in advertising, in humor shows, among others.

### **3.2 Two sides of the same coin.**

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<https://www.un.org/en/universal-declaration-human-rights/#:~:text=Article%2019.,media%20and%20regardless%20of%20frontiers.>

'Freedom of speech is the right to seek, receive and impart information and ideas of all kinds, by any means.'

When we analyze this fundamental Human Right, we realize the implications it carries. The right applies to different ideas, and all kinds of information, including those that might be deeply offensive and discriminatory. It is in these cases in which that freedom of speech can be legitimately restricted or banned.

The right to freedom of expression is closely connected with media freedom though is not frequently associated with it. Media freedom struggles often occur when there is a lack of considerations of the freedom of expression of the audience.

Our main duty is to be responsible for other people's rights and to respect them as well, because our responsibilities come together with our freedoms.

### **3.3. Restrictions to freedom of Speech**

Governments have the obligation to prohibit hate speech, as well as its incitement. They also have to restrict harmful content. Restrictions regarding hate speech are justified when said speeches attack the reputation, interfere with interests or breach others' rights.

State's role is to establish clear and concise laws, where the restrictions on freedom of speech and freedom of expression apply, so everyone can understand them.

Those who are in charge of imposing the restrictions (whether they are governments, agencies or employers) must be fair, impartial and must be able to

demonstrate the need for them, so as to take action when they face that a right has been violated.<sup>7</sup>

#### **4. Beijing Declaration and Platform for Action**

This Beijing Declaration was first published in 1995. On the 23<sup>rd</sup> anniversary of special session of the General Assembly in 2000 it was reprinted including a political declaration and the Outcome.

It was a resolution adopted by the United Nations at the end of the 4<sup>th</sup> World Conference on Women. The main purpose was to adopt principles as regards equality of men and women.

There was representation of 189 governments of all over the world with the single purpose, on mind, gender equality and women's empowerment all over the world.

They put emphasis on the most urgent needs to achieve a state in which women and girls can fully realize their rights and exercise freedoms and choices.

As regards the text of the Beijing Declaration, there are many areas of concern but we are going to mention "section J" related to women and the media, which is our field of study.

##### **4.1 Women and the media**

###### ***J. Women and the media***

*234. During the past decade, advances in information technology have facilitated a global communications network that transcends national*

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<sup>7</sup> Amnesty Webpage: <https://www.amnesty.org.uk/free-speech-freedom-expression-human-right>

*boundaries and has an impact on public policy, private attitudes and behavior, especially of children and young adults. Everywhere the potential exists for the media to make a far greater contribution to the advancement of women.*

*235. More women are involved in careers in the communications sector, but few have attained positions at the decision-making level or serve on governing boards and bodies that influence media policy. The lack of gender sensitivity in the media is evidenced by the failure to eliminate the gender-based stereotyping that can be found in public and private local, national and international media organizations.*

*236. The continued projection of negative and degrading images of women in media communications - electronic, print, visual and audio - must be changed. Print and electronic media in most countries do not provide a balanced picture of women's diverse lives and contributions to society in a changing world. In addition, violent and degrading or pornographic media products are also negatively affecting women and their participation in society. Programming that reinforces women's traditional roles can be equally limiting. The worldwide trend towards consumerism has created a climate in which advertisements and commercial messages often portray women primarily as consumers and target girls and women of all ages inappropriately.*

*237. Women should be empowered by enhancing their skills, knowledge and access to information technology. This will strengthen their ability to combat negative portrayals of women internationally and to challenge instances of abuse of the power of an increasingly important industry. Self-regulatory mechanisms for the media need to be created and strengthened and approaches developed to eliminate gender-biased programming. Most women, especially in developing countries, are not able to access effectively the expanding electronic information highways and therefore cannot establish networks that will provide them with alternative 150 sources of information. Women therefore need to be involved in decision-making regarding the*

*development of the new technologies in order to participate fully in their growth and impact.*

*238. In addressing the issue of the mobilization of the media, Governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in policies and programs.<sup>8</sup>*

They also suggest a series of measures to be taken by governments,

- Support training and education to ensure women's equal access to all areas and levels of media
- Support research on women and media, so as to define critical areas and review policies on gender perspective.
- Promote equal participation in the media
- Guarantee the freedom of the media within the framework of national law, consistent with the freedom of expression
- Promote a balanced and non-stereotyped portrayal of women in the media

They present, also, a higher scale of procedures to be taken at national and international media systems and by non-governmental organizations and professional associations.

As we can see they are still working hard towards gender equality, and women's empowerment, in all dimensions of life.

## **5. The CEDAW convention.**

The United Nations General Assembly adopted the CEDAW – Convention on the Elimination of All forms of Discrimination against Women on 18<sup>th</sup> December 1979. The CEDAW entered into force on September 1981.

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<sup>8</sup> <https://www.unwomen.org/en/digital-library/publications/2015/01/beijing-declaration>

Since the declaration CEDAW Convention many forms of discrimination and risks women faced have been made visible and addressed in many different ways by the countries which ratified the Convention. Nevertheless, the problem still exists and women face discrimination in every aspect of their social lives due to prevalent stereotypes.

We are going to pay special attention to General Recommendation N°19, which was adopted by the CEDAW Committee in 1992. This recommendation, on violence against women, was adopted under the requirement to report periodically, to the Committee, data on the incidence of violence against women, information on what services they provide to women victims of violence, what measures are being taken in order to protect women against violence in everyday lives.

The very last part of General Recommendation states specific recommendations where we can read and find detailed descriptions on what the State Parties are expected to do and what measures should be taken.

We are going to focus on subsection a, c, d, e and f because they are closely related to our matter of study.

All of them are vital and important but our task here is to enlighten gender, on media field, and the approach CEDAW delineates in order to eliminate violence.

## **5.1 CEDAW Specific Recommendations.**

### ***Specific recommendations***

***24. In light of these comments, the Committee on the Elimination of Discrimination against***

**Women recommends:**

*(a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act;*

*(c) States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence;*

*(d) Effective measures should be taken to ensure that the media respect and promote respect for women;*

*(e) States parties in their report should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women, and the kinds of violence that result. They should report the measures that they have undertaken to overcome violence, and the effect of those measures;*

*(f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programs to help eliminate prejudices which hinder women's equality (recommendation No. 3, 1987).*

Taking into account the previous extract, it is crystal clear that the primary organization in charge of taking action against gender-based violence and ensuring Women's Rights are being respected, is the State.

Subsection (d) recognizes the need to not only ensure but also promote respect for women.

States are also responsible to legislate according to what they have reported previously to the Committee, and they are also in charge of revising whether the measures they have taken are effective or not.

**Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women. The *Belem do Parà* Convention.**

The Inter-American Convention on the Prevention, Punishment and Eradication of violence against women set a landmark and, it is the basis to promote policies to prevent violence against women. It took place and was signed at the city of Belém do Pará, Brazil, the 9<sup>th</sup> of June, 1994. The Convention contributed to elaborate national plans as well as it served to foster the development of the Inter American Human Rights system.

Argentina has signed *Belém do Pará* Convention on October 10<sup>th</sup>, 1994 and it has ratified the treaty on September 04<sup>th</sup>, 1996.

*This Convention ...defines violence against women, establishes that women have the right to live a life free of violence and that violence against women constitutes a violation of human rights and fundamental freedoms.*

*It calls for the first time for the establishment of mechanisms for protecting and defending women's rights as essential to combating the phenomenon of violence against women's physical, sexual, and psychological integrity, whether in the public or the private sphere, and for asserting those rights within society.<sup>9</sup>*

The Convention is divided into five chapters, twenty-five articles and different subsections within the articles; we are going to pay special attention to article number 8 subsection g which states:

*The States Parties agree to undertake progressively specific measures, including programs:*

*g. to encourage the communications media to develop appropriate media guidelines in order to contribute to the eradication of violence*

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<sup>9</sup> OAS Convention. Available at <https://www.oas.org/en/MESECVI/convention.asp>

*against women in all its forms, and to enhance respect for the dignity of women;*<sup>10</sup>

It was the first time that Latin America joined together to make visible the urgent need for protecting and preserving women's rights. At those times, we can imagine they just included the requirements of a guideline to be set by the media. It is the only article that speaks about this matter. but I assume that it needs a revision, according to the present standards, because, nowadays, communication media operates in many different ways than at those times.

## **6. Conclusion**

It is noticeable that the way towards the achievement of gender equality, in media and press, has been marked by many changes and the evolution it has reached, throughout time, is undeniable. Historically, the call for gender equality has been part of state's agenda, but we are not sure that it is considered an urgent need.

Media influences opinions and perceptions, as well as shaping people's different ideas of gender roles in society. They have the responsibility, and power, to generate content reflecting gender balance, challenging stereotypes and showing a true perspective against gender violence.

I doubt it, it is true that a lot of work has been done but there is still much more to do to achieve a better standard and balance on the field.

The role of States Members is vital in depicting what their urgent needs are, in the media and press fields. This also applies to the policies they adopt to reverse the problematic situations and achieve a state of fairness as regards gender balance in media.

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<sup>10</sup> BELEM DO PARA Convention. Available at : <https://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf>

No country has yet finished this agenda on gender equality but there is real hope because there are multiple mechanisms, associations and platforms working really hard on this issue.

## **7. Annexes.**

### **7.1. UNESCO launches a handbook, for the media, on how to report violence against women and girls- 25/11/2019**

On the occasion of the International Day for the Elimination of Violence against Women, and with the support from the Canadian Commission for UNESCO, the Permanent Delegation of Canada to UNESCO, and in collaboration with France Médias Monde, UNESCO launched the publication “Reporting on Violence against Women and Girls: a Handbook for Journalists” on 22 November 2019 at UNESCO Headquarters in Paris.

The event aimed to encourage and stimulate reflection on media’s coverage of violence against women and girls, raise awareness among the audience on media’s potential impact in eliminating gender-based violence, and generate interest among media professionals and other stakeholders for reading and applying the handbook. By promoting good practices in reporting on violence against women and girls (VAWG), the event showcased UNESCO’s progressive stance in recognizing the urgency and epidemic nature of VAWG, as well as the Organization’s support to media in preventing and mitigating VAWG.

During the open debate that followed, many in the audience affirmed the urgency of the publication, sharing their own experiences or anecdotes from their professional life with regards to the issue. Others asked questions to the speakers concerning the challenges and opportunities facing media when reporting on gender-based violence, notably in an increasingly digitalized and information intense society. Several participants inquired on how to best implement the publication. UNESCO confirmed it could also be used by organizations working in the field.

The launch took place as a side event to the 40th session of the General Conference of UNESCO and was moderated by Ms. Virginie Herz, journalist and producer at France 24, and Gold Winner of the “Ricardo Ortega Memorial Prize for Broadcast Journalism at the 2018 UN Correspondents’ Association Award”. With more than 200 registered participants, in addition to delegates attending UNESCO’s General Conference, the event gathered journalists, NGOs, international organization representatives, other professionals and students.

Inaugural words were pronounced by H.E. Ms. Elaine Ayotte, Ambassador and permanent delegate of Canada to UNESCO, and Mr. Sébastien Goupil, Secretary-General of the Canadian Commission to UNESCO. Both underlined their firm support to the publication in view of the urgency for media to ethically address violence against women, and girls, to achieve gender equality. Ms. Mirta Lourenço, Chief of Section for Media Development and Society and Master of Ceremony of the event, then gave the word to Mr. Guy Berger, Director for Freedom of Expression and Media Development at UNESCO, who briefly presented the publication, its content and structure.

Numerous international organizations, NGOs and media professionals welcomed the publication, and some expressed their hope for future translations into other languages. The Liaison Officer of the Permanent Observer Mission of the Islamic Educational, Scientific and Cultural Organization (ISESCO) to UNESCO, affirmed the organization’s support for the publication and announced that ISESCO will fund its translation into Arabic, as well as activities to apply the handbook in the Arab region.

Closing the event, Ms. Saniye Gülser Corat, Director of the Division for Gender Equality in the Office of the Director-General of UNESCO, spoke of the importance of informed and ethical reporting and reaffirmed UNESCO’s support to raise awareness and build capacities of media professionals to promote gender equality.

The handbook “Reporting on Violence against Women and Girls: a Handbook for Journalists” is currently available in French and English, and will be available in Arabic and Spanish in 2020.<sup>11</sup>

## 7.2. Why free speech is a feminist issue

In “Why free speech is a feminist issue,” Meredith Tax says that censorship is too often overlooked in discussions on gender equality.<sup>12</sup> The fact is that, in 1993, at the UN Conference on Human Rights in Vienna, an extraordinary group of women activists forced the human rights movement to confront the sexism that had shaped their agenda until that time. The promise of Vienna was that the access to rights enshrined in the Universal Declaration would be made explicit in relation to women and gender.

The conference declaration said: “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”<sup>13</sup> It went into considerable detail about what this means for women.

However, the Vienna Declaration said very little about free expression. Nor was this omission rectified in the Beijing Declaration on Women’s Rights in 1995. The year before, after serving as founding chair of the International PEN Women Writers Committee, I had become President of a new organization, Women’s WORLD (Women’s World Organization for Rights, Literature and development).

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<sup>11</sup> <https://en.unesco.org/news/unesco-launches-handbook-media-how-report-violence-against-women-and-girls>

<sup>12</sup> Tax, Meredith, “Why free speech is a feminist issue”, 08 Mar 2013, “Index on Censorship” Webpage, available at: <https://www.indexoncensorship.org/2013/03/free-speech-feminism-international-womens-day/> Meredith Tax, *an American writer and activist, is Chair of the Board of the Centre for Secular Space, a new thinktank based in London* <http://www.meredithtax.org>.

<sup>13</sup> Conf: 1993 UN Conference in Vienna. Available at: <https://www.ohchr.org/en/aboutus/pages/viennawc.aspx#:~:text=The%20World%20Conference%20on%20Human.from%2014%2D25%20June%201993.&text=It%20called%20for%20the%20establishment.it%20on%2020%20December%201993.>

Women's WORLD was set up to investigate and advocate against gender-based censorship, both formal and informal, and to defend feminist writers. We prepared a document for Beijing called *The Power of the Word: Culture, Censorship and Voice*, emphasizing the importance of voice and thus of women writers to the struggle for women's equality:

*"The subordination of women is basic to all social systems based on dominance; for this reason, conservatives hate and fear the voices of women. That is why so many religions have made rules against women preaching or even speaking in the house of worship. That is why governments keep telling women to keep quiet: 'You're in the Constitution,' they will say, 'you have the vote, so you have no right to complain.' But having a voice is as important, perhaps more important, than having a vote. When censors attack women writers, they do so in order to intimidate all women and keep them from using their right to free expression. Gender-based censorship is therefore a problem not only for women writers, but for everyone concerned with the emancipation of women.*

*"Women writers are a threat to systems built on gender hierarchy because they open doors for other women. By expressing the painful contradictions between men and women in their society, by exposing the discrepancy between what society requires of women and what they need to be fulfilled, woman writers challenge the status quo...[and] make a breach in the wall of silence. They say things no one has ever said before and say them in print, where anyone can read and repeat them."*



## **CHAPTER TWO: THE RIGHT OF WOMEN TO FREEDOM OF SPEECH.<sup>14</sup>**

### **1. Introduction**

1.1. The present chapter aims to show the complexity of women's right to freedom of speech, as it is reflected in international treaties. It will be possible to understand, through international legal analysis, doctrine and jurisprudence, the great plot that exists on the interpretation of said act, the expressions used and how within it currently the right of expression of women is presented as a paradigm of postmodernity. Today, women stand up in many countries of the world in defence of their various human rights, being natural, which, for some reason, in some countries were never recognized. In others, although they've been recognized, they were not effectively enforced and they are still not being enforced, which motivates women's uprising. The right to freedom of expression is regarded as essential if the full enjoyment of the other human and natural rights of women is to be achieved, such as the right to education, physical and psychological integrity, access to proper work and the spaces of power constituted by both the executive, legislative and judicial powers, gender parity in all its spheres, through the method of positive discrimination. Only if women get the right to express themselves and be informed, could they get the aforementioned rights and overcome the inequality that they still suffer in many countries. Finally, we will see how freedom of expression could be applied to women with a vision of positive action for those states where the law is still not being applied.

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<sup>14</sup> By Victor Enrique Montenegro Stoianoff and Karina Antonella Cáceres Bignotti. October 2020.

1.2. Today, women stand up in many countries of the world in defense of their various human rights<sup>15</sup>, being natural, which for some reason in some countries were never recognized, but in others, being recognized<sup>16</sup>, they were not effectively enforced and currently they still are not, which motivates their uprising.

The right to freedom of expression as seen is essential if the full enjoyment of the other human and natural rights of women is to be achieved, such as the rights to education, physical and psychological integrity, access to work dignified and the spaces of power constituted by the executive, legislative and judicial powers, gender parity in all its spheres, through the method of positive discrimination. Only if women get the right to express themselves and be informed, could they get the other rights and overcome the inequality that still suffers in many countries.

Although the freedom of expression of women in Argentina was widely surpassed, despite its dark past in previous decades rooted in an Italian and Spanish culture above others, we could say that our country, Argentina, has not only signed and ratified the human rights treaties, but is also currently carrying out a great deal of legislative and political work in the matter of positive action in post of women's rights, however, there are countries in the American continent where still at the end of the 90's were behind in recognizing the women's right to expression and information, as stated in a 1999 annual report of the Inter-American Commission on Human Rights:

*“Although the situation of women has changed substantially, acquiring rights and protections emanating from both national laws and international human rights treaties, situations of de facto and de jure discrimination continue to exist. The Inter-American Commission, in its Report on the Status of Women in the Americas, urged member states to “modify or abolish legal provisions that discriminate or have a discriminatory effect against women, in addressing the practices and structural*

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<sup>15</sup> Arroyo Navarrete, Larissa. (2015a). Machismo kills, feminism doesn't. Pachyderm Magazine. Recovered from <http://www.revistapaquidermo.com/archives/12757>

<sup>16</sup> *Convention on the Elimination of All Forms of Discrimination against Women [CEDAW]. (1979). Retrieved from <http://www.un.org/women/watch/daw/Cedaw/text/sconvention.htm> Currently many countries have signed the CEDAW but within the state the national laws or authorities do not carry out positive actions and recognition of such regulations international, maintaining the status quo.*

*barriers that impede the full incorporation of women into national life and the allocation of appropriate resources to achieve these objectives (1999) <sup>17</sup>".*

The problem of freedom of expression for women is not only caused by lack of access to it, but also by suffering from the abuse of freedom of expression by another, who would affect the recognized human rights of women. In this inter-American context, Navarrete (2017) tells us a particular situation that happens in Costa Rica in relation to freedom of expression and the right to women, a case that deals with discrimination and the objectification of women in the media, but what matters to us is the weighting that the author deals with, the tension that exists between international women's law (CEDAW) and the right to freedom of expression.

This means that, in a balancing exercise, it is inevitable, on the one hand, to respond to international legal standards on freedom of expression; however, on the other hand, it is necessary to establish, clearly, and by law, the limits and the precise description of the justifications. However, if what is intended to safeguard with the principle of freedom of expression is the democratic context, the freedom and dignity of the people - and taking into account the historical weight of violence against women and the non-recognition of them as subjects full of rights, including due protections -, we cannot ignore that, up to now, not only have no actions been taken to comply with state duties, but we have not even discussed the clear imbalance in matters of human rights, where some are considered more people than others (Navarrete, p. 10).

Therefore, we see that we have the double development of women's rights in the context of freedom of expression, as access to it and as a limitation of the others.

This is an analysis for the countries that signed and recognize these human rights, but it is known that there are also countries that do not recognize such international human rights in the world, such as the USA that did not ratify CEDAW and did not sign some protocol agreements, but that recognizes at the level of local legislation through its constitution the rights of women and their right to freedom of

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<sup>17</sup> 1999 Annual Report of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights.

expression, which are materialized and carried out in liberal practice in a more forceful and indisputable way compared to other countries that have ratified the CEDAW, as are Saudi Arabia and many other Arab countries, which, as we will see, denotes that the approval of an international treaty by a state does not always mean its social materialization.

As a matter of deductive reasonableness, we will first deal with the issue in the international treaties signed and ratified by the Argentine Republic, incorporated into the constitution, which have constitutional hierarchy, as well as those regional international treaties, such as the European one. Naturally, all normative interpretation carries with it the doctrinal work with respect to its interpretative scope and jurisdictional assessment.

## **2. International Treaties.**

Freedom of expression has its origin internationally in the American Declaration of the Rights and Duties of Man six months before the Universal Declaration of Human Rights in 1948, but as a matter of deductive logic from the general to the particular, we go to treat first the second and the respective universal pacts, and then treat the regional international treaties. It is important to understand that freedom of expression did not have the same conceptual and contextual connotation, in 1948 after the Second World War, and today in 2020 where computer technology and the emergence of the internet have surpassed and expanded the media unimaginably of communication, ways by which people can express themselves and conversely have knowledge about the diversity of expressions that they choose according to their personal and private interest. Therefore, we can understand that although the media were changing and expanding, the types that freedom of expression comprises legally can be to disseminate or receive information, and this information can be of proven objective research or merely of opinion, as expressed The Universal Declaration of Human Rights –

### **Article 19 UDHR:**

*Every individual has the right to freedom of opinion and expression; This right includes the right not to be disturbed because of their opinions, to investigate and*

*receive information and opinions, and to disseminate them, without limitation of borders, by any means of expression.*

This regulation does not express the limits recognized both by the following international human rights covenants, as well as by doctrine and jurisprudence due to when the limits of the right to express oneself and violate other essential rights of the human being, such as dignity, data, would be exceeded private, or affect the democratic principles of a republican state or express publicly discriminatory hatred or violence.

It took until 1966 for the United Nations to adopt the international pacts ICCPR and ICESCR for there to be universal legislation expressing limits on freedom of expression. As we will see later, this was already regionally expressed in the American Convention.

To understand how freedom of expression is linked in the context of women's human rights, we should deal with CEDAW, the Convention on the Elimination of All Forms of Discrimination Against Women, which was approved in the United Nations Assembly this is at a universal level, in 1979, and it came into force in 1981. Although it is the most important instrument in the world on discrimination against women, it does not include violence against women, which if it were treated by the Belem do Para convention by the American States which we will deal with later in the regional treaties.

The CEDAW is interesting in its article 10 paragraph c, on the subject of the right to expression in women, it tells us:

*The States Parties shall adopt all appropriate measures to eliminate discrimination against women, in order to ensure equal rights with men in the field of education and in particular to ensure, under conditions of equality between men and women:*

*c) The elimination of any stereotypical concept of male and female roles at all levels and in all forms of education, by encouraging coeducation and other types of education that contribute to achieving this objective and, in particular, by modifying school books and programs and adapting teaching methods;*

If women did not have access to education and national laws denote a negative stereotype towards it, the right to expression of women would be previously censored, this is in their sphere of access to information. But if, on the contrary, we wanted to see a case in reverse, where prior censorship is not sought, but if we seek to avoid discrimination against women when a person or the media exercises their right to freedom of expression, we should apply article 19 inc. 3 of the International Covenant on Civil and Political Rights, which, as we will see, expresses the responsibility that the law entails, and the interpretation should be combined with article 1 of CEDAW in our hypothetical case.

For the purposes of this Convention, the expression "discrimination against women" shall denote any distinction, exclusion or restriction based on sex that has the object or result of diminishing or nullifying the recognition, enjoyment or exercise by women, regardless of their status. civil, on the basis of the equality of men and women, human rights and fundamental freedoms in the political, economic, social, cultural and civil spheres or in any other sphere.

Therefore, we see that any discrimination against women, in terms of distinction from men, whether in the manner of a stereotyped social or cultural joke, would be typified and would inexorably entail responsibility for the abuse of the right to expression of the person expressing it.

It is important to mention that the Argentine Republic by law 23179 reserved the non-application of inc. 1 of article 29 of the present agreement, which is why the international court of justice would not be bound by a case of controversy regarding this, and this is relevant if critical cases are considered as in other countries, as we will see below regarding freedom of expression.

The International Covenant on Civil and Political Rights states in its Article 19:

*1. No one can be bothered because of their opinions.*

*2. Everyone has the right to freedom of expression; This right includes the freedom to seek, receive and disseminate information and ideas of all kinds, regardless of borders, whether orally, in writing or in printed or artistic form, or by any other procedure of your choice.*

*3. The exercise of the right provided in paragraph 2 of this article entails special duties and responsibilities. Consequently, it may be subject to certain restrictions, which must, however, be expressly set by law and necessary to:*

*a) Ensure respect for the rights or reputation of others;*

*b) The protection of national security, public order or public health or morals.*

As we see the regulations, it continues to reiterate freedom of expression understood as in the Universal Declaration, but adds its limits in its third section, in two aspects, the private rights of men and guarantee a democratic state and in everything that this implies. It should be noted that it is not at all easy to elucidate difficult cases on whether he understood a violation of the private rights of other men. The same happens in difficult cases about the interpretation of national security or public order, or even worse, determining public morals.

An extreme case of the violation of the right to freedom of expression is the case of China, a country that in order to strengthen national security limits the right to freedom of expression, limiting the use of certain computer applications and / or web pages to its citizens. But neither could it be judged internationally on this regulation, taking into account that the Republic of China signed, but did not ratify this agreement, and did not even sign its operating agreements. Therefore, as of the date it is not obligated. An agreement that, if the last-mentioned country has signed and ratified, is the CESCR, as we will see below, it does not contemplate freedom of expression, but indirectly in relation to the rights of access to art, science and culture. But it has not signed or ratified its corresponding the optional protocol, which we will see that prevents other countries from reporting their non-compliance through communications, a tool that serves so that the specialist control committee created in the agreement can recommend and request reports to solve the problem. non-compliance through jurisdictional and executive channels within the country that is at fault. The same occurs with the United States, where the ICCPR has signed and ratified but has not signed the optional protocol, which leaves it out of any international means of requesting reports, as in the case of China.

The International Covenant on Economic, Social and Cultural Rights in its article 15 tells us:

*1. The States Parties to the present covenant recognize the right of every person to:*

*a) Participate in cultural life;*

*b) Enjoy the benefits of scientific progress and its applications;*

*c) Benefit from the protection of the moral and material interests that correspond to it by reason of the scientific, literary or artistic productions of which it is the author.*

*2. Among the measures that the States Parties to the present pact shall adopt to ensure the full exercise of this right, shall include those necessary for the conservation, development and dissemination of science and culture.*

*3. The States Parties to the present pact undertake to respect the indispensable freedom for scientific research and creative activity.*

*4. The States Parties to the present pact recognize the benefits derived from the promotion and development of cooperation and international relations in scientific and cultural matters.*

The problem as we have been developing it is that, although the cited article states that states must adopt certain measures to guarantee the right, on the other hand, in certain countries such as the case of China that we cited, where the powers of the state are in coexistence, it is very difficult to enforce a certain breach without resorting to jurisdictional courts external to the government. The same is true for the US. Leaving aside the communications that establish the protocols of the aforementioned agreements, we can ask ourselves about the international court of justice to derive the complaint of the breach of the agreements, but here we would have the disadvantage that neither of the two agreements, as well as the Universal Declaration of Human Rights, does not bind the ICJ as an optional jurisdiction to the resolution of the conflict.

Currently the Internet in the world makes intercommunication between all the citizens of Planet Earth an instantaneous constant, and it becomes more and more essential for the human being as a means of expression. Thus, there are new mobile application platforms, which are mostly exploited by young people or children, who

can express themselves and communicate with the rest of the world. Therefore, it is appropriate to cite the Convention on the Rights of the Child - Article 13:

*1. The child shall have the right to freedom of expression; This right will include the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, in artistic form or by any other means chosen by the child.*

*2. The exercise of such right may be subject to certain restrictions, which will only be those that the law provides and are necessary:*

*a) For the respect of the rights or reputation of others; or*

*b) For the protection of national security or public order or to protect public health or morals.*

As a child, in a large number of countries of continental and / or Anglo-Saxon law, a person under 18 years old is understood, as we said, there is a large number of technological applications in mobile telephones used by children, to quote currently the largest by billions of users to Facebook, Instagram, or Tik Tok. The child could by any of these means disseminate information, even in artistic form as the aforementioned platforms offer, videos, edited photographs, phrases, and opinions of all kinds. But sovereign States due to point 2 of article 13 could also consider the reputation of others, or for reasons of national security restrict such right. Thus arises the most paradigmatic cases such as the technological and commercial war between the United States and China, where the latter did not allow the Facebook and Instagram platforms to enter their country, several years ago, claiming national security for considering them spies stealing information of its inhabitants through the data extracted when using the technological application, what is currently known as Bigdata and its subsequent sale or commercialization for different purposes, whether political or commercial. And recently, given the rise in the world of the Tik Tok application belonging to China, the US is claiming the same defence that China had used at the time, restricting the use of such application as it is considered unsafe for the US Nation. Therefore, we can momentarily conclude that the right to freedom of expression would inevitably be deprived for both countries in such circumstances, not for the rest of the countries that can continue to enjoy the

use of any technological applications regardless of their country of origin. We consider that the problem of weighing the law would be resolved if both countries and the United Nations organization can elucidate whether technology applications really extract data from their users, as long as the data is violated and used to affect the privacy of people or security of a nation, no communication technology application could be one hundred percent secure, regardless of its country of tax residence.

Another aspect to take into account in terms of regulation freedom of expression is discrimination that affects not only women, as we saw above with CEDAW, but could also affect all types of gender regardless of sex, for which we could not ignore the International Convention on the Elimination of All Forms of Racial Discrimination, which in Article 4 tells us:

*The States Parties condemn all propaganda and all organizations that are inspired by ideas or theories based on the superiority of a race or of a group of people of a certain colour or ethnic origin, or that seek to justify or promote racial hatred and racial discrimination, whatever its form, and undertake to take immediate and positive measures aimed at eliminating any incitement to such discrimination or acts of such discrimination and, to that end, taking due account of the principles incorporated in the Universal Declaration of Rights. Human beings, as well as the rights expressly set forth in Article 5 of this Convention, shall take the following measures, among others:*

*a) Declare as punishable by law, any dissemination of ideas based on superiority or racial hatred, any incitement to racial discrimination as well as any act of violence or any incitement to commit such effect, against any race or group of people of another colour or ethnic origin, and any assistance to racist activities, including their financing;*

*b) Declare illegal and prohibit organizations, as well as organized propaganda activities and all other propaganda activities, that promote and incite racial discrimination and recognize that participation in such organizations or in such activities constitutes a crime punishable by the law;*

*c) They will not allow national or local authorities or public institutions to promote or incite racial discrimination.*

The article is very clear about the different types of configuration of racial discrimination, and its means, such as the expression of ideas or organizations and activities for such purposes, but the problem that the article does not currently contemplate arises from the new technologies of the computing, where recent mobile phone applications where all types of communication are expressed instantly, tend or are prone to generate some type of racial discrimination with personal punctuation options or number of “like” ticks. Obviously, these tools can not only generate racial discrimination, but also social and economic discrimination. And for the simple reason that in today's modernity young people cannot escape such world-running technologies, they are tied to such possible discriminatory effects.

In conclusion, at a universal level there is a problem regarding the jurisdiction to correct the defects that are promoted within the states parties when they breach the international treaty or its interpretation is discussed to be applied within the country or in a conflict discussion between two or more countries on the letter of the treaty. As we saw the CCPR and the CESCR do not have jurisdiction in the ICJ, and the CEDAW, although it does have it through its article 29 inc. 1, countries such as Argentina, China, Saudi Arabia, Chile, Brazil, England, among others, made reservations and do not recognize the jurisdiction.

There is also the problem of communications that states can issue through the optional protocols of international conventions, these communications can resolve violations of international rights by the state by an international expert committee that is impartial from the state where it is being violated. the same. But again, we see that, for example, in CEDAW and CCPR in countries such as the US, China, Saudi Arabia, England, Argentina, among others, they did not sign the optional protocol and / or made reservations to the communications, for this reason violations of these international rights on the part of the state, such as discrimination against women and freedom of expression of women in all its spheres could not be resolved by the impartial international expert committee of the state party. Which

would continue to be governed by the provisions and jurisdictions interpreted within the country, which is being denounced by its own citizens, which denotes a mere symbolism of the international agreement.

### 3. Regional Treaties

At the regional level, we can mention international treaties within certain continents, American, Europe, Africa, etc. Regarding Argentina, the American Declaration of the Rights and Duties of Man, which precedes the universal declaration of human rights by 6 months and therefore was the first international human rights treaty, in its article IV does not speak of freedom of expression:

*Everyone has the right to freedom of investigation, of opinion and of expression and dissemination of thought by any means.*

But it took more than a decade for it to become mandatory for many of its member countries, since being a mere declaration many member countries would not consider it binding to their domestic law, until in 1969 the **American Convention on Human Rights** was created.

Human beings, where the countries that have signed and ratified it are bound by Article 13 to Freedom of Thought and Expression:

*1. Everyone has the right to freedom of thought and expression.*

*This right includes the freedom to seek to receive and disseminate information and ideas of all kinds, regardless of borders, whether orally in writing or in printed or artistic form or any other procedure of your choice.*

*2. The exercise of the right foreseen in the preceding paragraph cannot be subject to prior censorship but to subsequent responsibilities, which must be expressly established by law and be necessary to ensure:*

*a) respect for the rights or reputations of others, or*

*b) the protection of national security, public order or public health or morals.*

*3. The right of expression cannot be restricted by indirect or indirect means, such as the abuse of official or private controls of newsprint, radio frequencies, or*

*appliances and devices used in the dissemination of information or by any other means aimed at preventing communication and the circulation of ideas and opinions.*

*4. Public shows may be subjected by law to prior censorship with the sole purpose of regulating access to them for the moral protection of childhood and adolescence, without prejudice to the provisions of subsection 2.*

*5. All propaganda in favour of war and all advocacy of national, racial or religious hatred that constitute incitement to violence or any person or group of people, for any reason, including those of race, colour, religion, shall be prohibited by law., language or national origin.*

We refer to commenting on subsection 3 and 4, for being 1, 2 and 5 already mentioned above. Section 3 is closely related to the means of restricting protest, and this is interesting to us in terms of women's rights to expression when they rise up in protest to defend their rights, it is known in Argentina and the rest current feminist groups around the world, which can be caused by any discrimination and / or violence against women, as well as those concerning abortion, bisexuality and transsexuality. When the protest is to be dissipated, it is regulated by indirect means, as the subsection clearly expresses, this is logically applicable to the protest, but what the subsection does not tell us therefore is, how to know before a legal restriction where it is establishes the time, mode and place to express an idea, in such a way that it is without the desired effect. Therefore, it is a point in favour of the fact that freedom of expression is the genesis of the right to protest and that restrictions when they hide their true face are mechanisms to dissipate them. This comes as a result of the great doubt and criticism that exists in the face of uprisings and ways of demonstrating by women in recent times, and since we believe that the discussion exceeds mere discrimination (CEDAW), it is appropriate to address the inter-American convention to prevent, sanction and eradicate violence against women "convention of Belem do para" and as mentioned above, it deals with critical issues that CEDAW will not deal with, which makes it the first international instrument of its kind.

**The Belem do Para convention** in its article 8 tells us:

*g. encourages the media to develop appropriate guidelines for dissemination that contribute to eradicating violence against women in all its forms and to enhance respect for the dignity of women;*

*h. guarantees the investigation and compilation of statistics and other pertinent information on the causes, consequences and frequency of violence against women, in order to evaluate the effectiveness of the measures to prevent, punish and eliminate violence against women and to formulate and apply the changes that are necessary.*

An effective way to eradicate violence against women is to promote its massification through mass media such as radio, TV, and the Internet. This is important considering the patriarchal and macho culture in many countries of the American continent. These means of communication can be highly effective so that women can be heard and express the violence that is inflicted on them. And when we talk about violence, we understand, according to article 1:

*For the purposes of this Convention, violence against women should be understood as any action or conduct, based on gender, that causes death, damage or physical, sexual or psychological suffering to women, both in the public and private spheres.*

As we see violence, it would not only include the physical or sexual as many understand but also the psychological, very typical of harassment in different environments, whether family, work or social. And perhaps the most important thing to eradicate this type of violence is the economic compensation towards women, in such a way that the reparation is not only symbolic and abstract, but that it imposes a type of subsequent responsibility for those people who violated the woman for any reason. medium, even in the area of freedom of expression, because as we have seen and will see, freedom of expression does not have prior censorship but does have subsequent responsibility. Article 7 in its pertinent part tells us:

*g. establishes the necessary judicial and administrative mechanisms to ensure that women subjected to violence have effective access to redress, reparation for damage or other just and effective means of compensation.*

It is interesting to us when analysing the regulations, what the Inter-American Court of Human Rights has expressed in this regard, since it is the consultative and conflict resolution authority according to the convention. But it only became operational ten years later, due to its statute, approved by Resolution N° 448 adopted by the OAS General Assembly at its ninth session, held in La Paz, Bolivia, October 1979. Therefore, the court can by its articles 61 and following be competent to solve controversial cases that arrive at the request of a state party or by the commission, but also, by article 64 can evacuate interpretative consultations, which is extremely important to us here:

*The Member States of the Organization may consult the Court regarding the interpretation of this Convention or other treaties concerning the protection of human rights in the American States. Likewise, the bodies listed in Chapter X of the Charter of the Organization of American States, as amended by the Buenos Aires protocol, may consult it as far as it is concerned.*

The advisory opinion that is pertinent to our issue is advisory opinion oc-5/85 of November 13, 1985, the mandatory membership of journalists (arts. 13 and 29 American convention on human rights) requested by the government of Costa Rica. It is the famous Schmidt case <sup>18</sup> that gave rise to this advisory opinion, in the case the actor was condemned by the Costa Rican justice because it interpreted that the association according to national law was violated due to lack of membership, the subject could not express himself freely as a journalist through the media. It is also appropriate to cite that the opinion of the Inter-American Human Rights Commission on this case was also unfavourable, I interpret that the law of association and the state of Costa Rica did not violate any regulations regarding freedom of expression. Only the Court unanimously interpreted that the collegiate law was incompatible with the American convention Article 13 in two aspects, the court is of opinion:

*First*

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<sup>18</sup> [https://www.corteidh.or.cr/opiniones\\_consultivas.cfm](https://www.corteidh.or.cr/opiniones_consultivas.cfm) see in the advisory opinion 5/85 the development of the case in all its aspects.

*Unanimously, that the mandatory membership of journalists, insofar as it prevents any person from fully using the media as a vehicle to express themselves or to transmit information, is incompatible with Article 13 of the American Convention on Human Rights.*

*Second*

*Unanimously, that Law No. 4420 of September 22, 1969, Organic Law of the College of Journalists of Costa Rica, object of this consultation, inasmuch as it prevents certain persons from belonging to the College of Journalists and, consequently, the Full use of the media as a vehicle to express oneself and transmit information is incompatible with Article 13 of the American Convention on Human Rights.*

The reader will be able to understand that the case discussed in this consultation is closely related to the right to association, professional ethics and its public regulations, and if one reads all of October 5-85, he will be able to appreciate that development, but what We are concerned with the interpretation made by the court throughout its development in relation to article 13 of freedom of expression and article 29 norms of interpretation, which interests us at present.

In relation to Article 13, the Court said, it is necessary to quote verbatim the two aspects that are extremely important to us, which cannot exist without each other:

*In its individual dimension, freedom of expression is not limited to the theoretical recognition of the right to speak or write, but also includes, inseparably, the right to use any appropriate means to disseminate thought and make it reach the greatest number of recipients. When the Convention proclaims that freedom of thought and expression includes the right to disseminate information and ideas "by any ... procedure", it is underlining that the expression and dissemination of thought and information are indivisible, so that a restriction of the possibilities of disclosure represents directly, and to the same extent, a limit to the right to express oneself freely. Hence the importance of the legal regime applicable to the press and the status of those who dedicate themselves professionally to it.*

In its social dimension, freedom of expression is a means for the exchange of ideas and information and for mass communication between human beings. As well as understanding the right of each one to try to communicate their own points of view to others, it also implies the right of all to know opinions and news. Knowledge of the opinion of others or the information available to others is as important to the common citizen as the right to disseminate one's own.

The most impotent thing in this mentioned quote, following our study, is the terminology in the proposition "by any ... procedure", this could mark the field for an interpretation of the protest of the "feminist" groups, in its manifestation by way of example in the public highway, in order to be heard by a certain public that would understand the social dimension, which also gives rise to thinking about those doctrines that speak to us about the limits to any attempt to exaggerate the regulations of the protests.

Regarding article 29 interpretation, it is important to analyse its subsection d for the purposes we pursue, which must necessarily be contrasted with the second paragraph of article 32, let's see:

*Art. 29. d) exclude or limit the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may produce.*

*Article 32. Correlation between Duties and Rights: 2. The rights of each person are limited by the rights of others, by the safety of all and by the just demands of the common good, in a democratic society.*

This article clarifies that it is not true what people say, that "*your rights end where the law of others begins*". This is false because it was justified, with authors such as R. Dworkin, Habermas, R. Alexy, Ihering, Foucault, among others, that right **is not just harmony**, and the weighting of fundamental rights when they collide is very difficult to determine, both in its process of positive logical deduction, as in the substantive aspect of law. With respect to the morality of law, the same thing happens, because morality varies greatly between people and ethics varies between states, as Dr Fuller well understood.

A problem of conflict of rights and normative interpretation would be in the right of freedom of expression of any journalist, who by doing his comic program causes some type of psychic violence against women, causing harm or discriminating against them (CEDAW). The crucial point is to determine the psychic violence against women, any woman who feels harm through the free expressions of the journalist. Not an easy task for the judge or court, and the same happens in discrimination, taking into account the diverse cultures throughout the American continent.

The advisory opinion concludes that this normative interpretation of the cited articles is also typical of other regional international treaties, as we will see later in the example of the European Union, a similar regulation in its article 10.

### **The Inter-American Court Human Rights:**

Following Ms. Arcila Cano (s / f), the InterAmerican Court of Human Rights has expressed itself in the interpretation of article 13 in favour of freedom of expression on the following issues: of public interest, cases: *Ivcher Bronstein vs. Peru. 2001*<sup>19</sup>, *Usón Ramírez vs. Venezuela. 2009*<sup>20</sup>, *Ricardo Canese vs. Paraguay. 2004*<sup>21</sup>, *Palamara Iribarne vs. Chile. 2005*<sup>22</sup>, *Kimel vs. Argentina. 2008*<sup>23</sup>.

These cases have a common denominator that is the confrontation with the official interests of the government of the day, which leads to restricting freedom of expression, but their methods range from academic texts to television programs, but we did not find any that analyse a method of protest as a means of expressing a thought, neither did we find any that deals with the issue of gender and violence against women; Human body issue, the only case of *López Álvarez v. Honduras. 2006*<sup>24</sup>.; Subject statements of public officials: Cases: *Perozo and others vs. Venezuela. 2009*<sup>25</sup>, *Ríos and others vs. Venezuela. 2009*<sup>26</sup>, where expressions of

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<sup>19</sup> Court I.D.H. No. 74. Para. 168

<sup>20</sup> Court I.D.H. No. 207. Para. 45, 86, 101

<sup>21</sup> I / A Court HR. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111

<sup>22</sup> I / A Court HR. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135

<sup>23</sup> I / A Court HR. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177.

<sup>24</sup> I / A Court HR. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141.

<sup>25</sup> I / A Court HR. Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195.

<sup>26</sup> I / A Court HR. Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194.

politicians or officials are analysed which do not represent excess freedom of expression as long as they do not violate other rights such as the honour of others and commit crimes of slander or insults. And in other situations, it has expressed that the right to freedom of expression is not violated, or failing that it interprets that such violation of the right is an accessory consequence of the violation of other rights that is criticized in the ruling, citing cases such as: See Blake vs. Guatemala. 1999<sup>27</sup>, And Maritza Urrutia vs. Guatemala. 2003<sup>28</sup>. In such cases, the main violated right turned out to be more serious than freedom of expression, as the majority were criminal matters such as crimes of torture, kidnapping or disappearances. Therefore, there would be no doubt that freedom of expression in such cases would not be in dispute, but attention would be focused on such other essential rights as life itself, bodily freedom and physical integrity.

We believe that the same would happen with the violation of women's rights, if the damage was due to physical or sexual violence, the issue runs from freedom of expression, beyond the fact that it occurs and is transmitted through the media, we believe That I would focus the discussion on the main issue so as not to directly deal with freedom of expression, which we consider correct. It would be different if it is a psychological damage or a case of discrimination caused by the media, here we believe that the court may address the limits of freedom of expression and condemn a subsequent liability for the damage caused to the woman.

Continuing with regional treaties, it is pertinent to cite the European convention for the protection of Human Rights<sup>29</sup> and Fundamental freedoms,

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<sup>27</sup> I / A Court HR. Background. Judgment of January 24, 1998. Series C No. 36.

<sup>28</sup> I / A Court HR. Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103.

<sup>29</sup> [https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/glossary\\_search/european-convention-protection-human\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/european-convention-protection-human_en)

Article 10, Freedom of expression: 1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for

coming into force in 1953, which in its article 10 expresses the freedom of expression and opinion in its first paragraph, and in its second paragraph, it highlights the restrictions as the other conventions already discussed, such as responsibility. in the affectation of the rights of others in their reputation and in matters concerning national security.

**The African Charter on Human and Peoples' Rights** expresses similar <sup>30</sup>, which came into force only in 1986 for the African continent, expressing in its article 9, its two aspects already seen in the other treaties, freedom of expression, opinion and restriction according to law. We leave the last two articles cited at the bottom of the page, so the reader could directly appreciate it from the page from which it was recovered.

#### 4. Conclusion

From the point of view of law and consideration: The woman has the right to express herself freely in two senses, to express herself and to be heard, and to access the information expressed by others. Any person or means of communication can express themselves about women without prior censorship, but has a subsequent responsibility in the event of discrimination or violence against women in the content or medium expressed. The woman can express herself by any means without prior censorship, but she has a subsequent responsibility in case of affecting the rights of others, morals or public interests. But we can conclude that it is not easy to determine the weighting of the rights affected in the means used for freedom of expression. Therefore, we can advise as positive action, prior censorship of certain mass media, through a national law that expressly regulates some methods and content that may affect the fight against discrimination and violence against women.

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the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

<sup>30</sup> <https://au.int/en/treaties/african-charter-human-and-peoples-rights>

Article 9: 1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law.

And secondly, we can advise that the method of freedom of expression used by women in their fight against violence and discrimination denotes positive discrimination in favour of women, as a protective principle against the weighting of international and constitutional human rights in conflict.

From the point of view of the judicial process: At a universal level, the International Court of Justice does not have jurisdiction to resolve violations by states parties, of the rights of the treaties that we saw (for example, ICCPR, ICESCR). At the regional level, the Inter-American Court of Human Rights does not have jurisdiction to resolve violations by states parties that have not signed or ratified the American Convention on Human Rights or Belem do Para, (for example, the United States or Canada). The same happens with communications to denounce a violation of rights, of interpretation and / or report, if a certain country has not ratified the optional protocol of a treaty, this route cannot be accessed, leaving international law as something symbolic since your destination will be defined within the borders of the country.





## CHAPTER THREE: EVOLUTION OF WOMEN'S RIGHTS AND INTERNATIONAL CONVENTIONS<sup>31</sup>

### 4. Introduction

Humankind is an incredible witness of the way women's rights have been the protagonist of a continuous evolution. The purpose of this work is to develop an objective revision of the milestone international conventions that amount to the remarkable achievements after a prolonged period of fighting.

Oppression and discrimination against women were naturalized in the first half of the 20<sup>th</sup> century; but after the Second World War the traditional role with which the woman was associated up to this point of history: the repercussion is the reason for which I decided to make at the beginning of this analysis an overall summary of its significance. This worldwide conflict brought about an analysis of the position of women as well as a wave of heated negotiations in the political sphere about inclusive human rights and the immediate need to create provisions that would protect those who were seeking for their universal rights entitlement. In this context, the Universal Declaration of Human Rights was created, followed by two additional legal instruments of International Bill of Human Rights. Before I depict a section of the Hague Convention on the Civil Aspects of International Child Abduction, I pay special attention to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

I have determined as well to offer future readers a definition of two key terms that are essential to understand the topics that I developed and also a global reality. These are "*convention*" and "*patriarchy*". In regard to the latter concept "which still remains in our everyday life", I make an examination of some of the

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<sup>31</sup> By Rocío Giacomaso

most important issues that concern us as a society, including the glass ceiling effect, violence against women in the domestic domain and the conception of women within some religions.

## **5. Context: Second World War**

In order to provide this work with an integral analysis of the evolution of women's rights in relation with international conventions, it might be reasonable to make allusion to the considerable significance that the Second World War had in the social system. This historical event, dated back to the period of 1939-1945, caused a shift in women's everyday lives. Not only did it represent growth on labor demands for the male community due to war but also for the female who had to deal with further domestic adversities, duties and responsibilities. These changes led Americans to reflect upon their notion about the women's role in society, their behaviors and appearances.

Even though women were used to be in charge of ordinary household on their own, during the war they found themselves in an awkward situation. A large number of them had to gain knowledge on finances for the first time as well as to subsist with a low budget. According to Kevin Hymel –historian at the U.S Air Force Medical Service History Office,

*“With their men away, women became more self-sufficient. Many brought tools home from work and used them on their own home repairs. They took on domestic roles they had never before”*

Some of them also acquired a standard of basic competences and techniques in a wide range of specific areas, such as heavy industry and wartime production. Some of the most common jobs women had been:

- ✓ streetcar operators
- ✓ taxi drivers
- ✓ construction workers
- ✓ steel workers
- ✓ lumber workers
- ✓ munitions workers
- ✓ agriculture workers
- ✓ government workers
- ✓ office workers
- ✓ translators in Naval Intelligence
- ✓ truck drivers
- ✓ radio operators
- ✓ engineers
- ✓ photographers
- ✓ non-combat pilots

The American government launched a vigorous press campaign on behalf of women participation in factories and defense plants. It consisted of posters and film reels showing ordinary but attractive and charismatic women doing their jobs, as part of the national labor force, in different workplaces which were up to then associated to men.

From many Americans' point of view, Rosie the Riveter encapsulated a symbol of strength, confidence, determination and hope by her famous slogan "We can do it!" Although it was claimed that women were essential to victory, their performances in these new roles constituted a challenge for a society which used to keep women off scene.



“We Can Do It!” poster <sup>32</sup>

These transformative changes triggered a negative behavioral response among male co-worker that resulted in resistance, sexual harassment, discriminatory treatment, abuses and labor exploitation. Despite abuses and working conditions, women gain, above all, a great deal of confidence and independence by earning wages because of their own efforts and spending time away from the supervision of the family. They threatened to uproot the traditional image of male workers and female cooks and homemakers taking care of every member of the family. To some extent, the involvement of women in the labor force produced an enormous change in history. Men could no longer claim superiority over women. A sensational sense of personal freedom and independence were the new feeling among women.

## 6. United Nations Agreements on Women’s Rights

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<sup>32</sup> Miller, Howard J. “We Can Do It!” for Westinghouse Electric Company. (1943) Wikipedia La Enciclopedia Libre. URL: [https://es.wikipedia.org/wiki/We\\_Can\\_Do\\_It!](https://es.wikipedia.org/wiki/We_Can_Do_It!)

### **What is a Convention?**

- *“a formal agreement, especially between countries, about particular rules or behavior”<sup>33</sup>*
- *“A convention refers to all kinds of agreements, contracts or treaties entered into by the nations, such as Geneva Convention. Convention is mostly used to denote a deliberative assembly which amends, revises or helps in framing a constitution of a state. Such a convention is termed constitutional convention”<sup>34</sup>*
- *“A general term which comprehends all kinds of contracts, treaties, pacts, or agreements. It is defined to be the consent of two or more persons to form with each other an engagement, or to dissolve or change one which they had previously formed”<sup>35</sup>*

## **6.1. The International Bill of Human Rights**

As the vast majority of human rights agreements, the Universal Declaration of Human Rights was proposed in response to the “barbarous acts which (...) outraged the conscience of mankind”. In particular, the issues brought by the Second World War encouraged an intense awareness among the community with respect to the women’s role and contribution to the entire community. On top of that, one of the major points that required an adequate and urgent consideration in the designing process of the declaration in 1946 were its universality and non-discrimination items which were “race, sex, language or religion” Article 2 <sup>36</sup> explicitly states that *“Everyone is equal regardless of race, color, sex, language,*

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<sup>33</sup> *Dictionary of Contemporary English. New Edition for Advanced Learners.* Pearson Longman. Pearson Education Limited (2009)

<sup>34</sup> US Legal. *Convention Law and Legal Definition.*

<sup>35</sup> *Law Dictionary & Black’s Dictionary 2<sup>nd</sup> Edition.* TheLaw.com LLC. (2015)

<sup>36</sup> UN General Assembly. (1948). *Universal Declaration of Human Rights.* Paris

*religion politics or where they were born”* On 10 December 1948, the United Nations proclaimed the Universal Declaration of Human Rights.

Undoubtedly, this declaration signifies a moral milestone in the history of the community of nations. To put it in another way, for the first time in human history, basic civil, political, economic, social and cultural proved to be accepted as fundamental regulations that every human being should respect and preserve in order to promote a sense of harmony. Therefore, its principles have been codified in treaties, covenants, and conventions to make them legally binding on the countries and entities that became party to them. The UDHR has been translated into 523 languages, and it is the most translated document in the world.



Eleanor Roosevelt holding poster of the Universal Declaration of Human Rights (in English), Lake Success, New York. November 1949.<sup>37</sup>

Two pivotal legal instruments followed the Universal Declaration of Human Rights: both of them gave the UDHR the formidable force of law. Together, these three documents constitute what is known as the International Bill of Human Rights.

On the same day that the UDHR was adopted, the General Assembly raised a petition to the Commission of Human Rights on behalf of preparing, as a matter of priority, a draft of the Covenant on Human Rights on Economic, Social

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<sup>37</sup> By FDR Presidential Library & Museum - <https://www.flickr.com/photos/fdrlibrary/27758131387/>, CC BY 2.0, <https://commons.wikimedia.org/w/index.php?curid=82568079>

and Cultural Rights. It is relevant to remark that Article 2 of the ICCPR states that if any of these rights were violated, a person would have access to an effective remedy (Article 2 (3) (a))

The right to an effective remedy embraces a critical role in the resolution of allegations concerning the infringement of the Convention under domestic law. That is to say that those State Parties which have ratified the ICCPR are responsible of establishing appropriate judicial and administrative mechanisms for addressing claims in case the rights or freedoms recognized within the ICCPR were proved to be either restricted or violated. Depending on the right in question, the instrument that the justice will apply could include inquiry, explanation, reply, correction, apology, reinstatement, reconnection and compensation.

In 1950, the General Assembly resolved on incorporating in this document a specific reference to the *equality of men and women*. After a complex negotiation process during 1951 and 1952 among the members of the Assembly, it was decided to ask the Commission to draft another covenant which may, this time, make allusion to civil and political rights. Not until 1966 did they prepare the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both the ICCPR and the ICESCR were adopted by the General Assembly by its resolution 2200 A (XXI) of 16 December 1966.

The 1960s were crucial due to the fact that a heightened awareness of the pattern of gender discrimination and inequality which adversely affected people's judgment against women in various spheres. Because of this, women devoted a great deal of effort to raise their voices and eventually found and became members of a great number of organizations by which they displayed absolute commitment to the cause of discrimination.

The International Bill of Human Rights has provided solid foundations for domestic law to which all persons were entitled. Nevertheless, they proved insufficient over the years for women since these did not completely safeguard the full enjoyment of their rights. Therefore, in 1963, the United Nations General

Assembly adopted a resolution requesting that the Commission on the Status of Women prepare a draft declaration combining in a sole legal provision international standards that enshrine the rights of women from patriarchal principles and practices. Four years later, the Declaration on Elimination of Discrimination was adopted by the General Assembly.

## **6.2. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

CEDAW constituted the first international document to contain an explicit reference to the abstraction of equality between men and women. In this light, Article 1<sup>38</sup> states that *discrimination against women* is defined as:

*“...] any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”*

The citation above is no more than a brief summary of those deplorable as well as unfavorable conditions to which women had been exposed up to that time. Up to then, their twenty-four hours faced a high abundance of house chores, including preparing delicious meals, doing the ironing, weeding gardens, mopping floors and – last but not least- taking care of the children. While they spent most of their time honoring these obligations, their husbands used to be at work owing to the fact that women were not considered capable enough to fulfill the requirements of jobs offered, for instance, by factories. The provision and control

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<sup>38</sup> UN General Assembly. *Convention on the Elimination of All Forms of Discrimination Against Women*. U.Nations (1979), available at: <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#intro>

of the capital of the homes represents one of the primary causes of women's oppression.

Based on the assumption that the patriarchal system still operates under no disguise in the mundane reality, the Convention on the Elimination of All Forms of Discrimination Against Women encompasses the drafting of its articles from the political, civil and reproductive points of view. Within PART I of the Convention, Articles 7, 8 and 9 focus their attention on the participation of women in the public and political agenda, including their rights to vote in elections, to be taken into consideration in the formulation of domestic policies, to become members either of non-governmental or of international associations representing their governments and to take their own decisions with respect to their nationalities and their children's—independently from their husband's. PART II is aimed at setting appropriate measures to protect women's rights in the working, economic and health spheres of life as well as to assure their entitlement for receiving family and financial benefits. Besides, article 14 draws special attention to women who live in rural areas and their particular conditions in the agricultural area. Functional literacy, social security programs, access to information, availability of technology, living conditions – for instance hygiene, electricity and water supply- and sanitation are considered to be sine qua non groundwork for their contribution to the rural development process.

On top of that, the spirit of CEDAW lies on the importance given to reproductive matters, from the preamble by stating that the States Parties of the Convention are "*Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women*" In addition to this, in Article 16 devotes special attention to the equality of men and women in terms of marriage and family relations, In other words, it brings to discussion the moral responsibility, obligations as well as the sensible and crucial decision of belonging to a family of the young girls whose personal rights are being infringed. From the Convention's point of view, women have the right to consciously resolve whether getting

married or not, to share responsibilities with their spouses and, in case of partnership or under adoption circumstances, the rights to decide with a conscious awareness on the course of their lives as free human beings.

An additional international treaty that gives force to the CEDAW – its parent agreement<sup>39</sup>- is the Optional Protocol, which was ratified by 88 Parties on March 2008. This instrument, introduces additional procedures to the Convention. On the one hand, State Parties to the protocol have the commitment of submitting communications by or on behalf individuals whose rights had been violated or restricted in accordance with the CEDAW conceding that “all available domestic remedies have been exhausted”<sup>40</sup> Furthermore, develops an inquiry procedure into situations and a supplemental report based on their own methodology to gather reliable information, including visiting the jurisdiction from which the report comes from.

Although CEDAW is widely ratified, it also has the highest number of reservations of any convention. In accordance with the Argentinian 1985 reservation, the Government of Argentina does not reckon itself bound by article 29, paragraph 1 of the Convention. Therefore, in case Argentina becomes involved in a dissent with another State, it will not be submitted to arbitration. The notification to the Secretary – General of the United Nations is a necessary step explicitly required by the Convention in the second paragraph of the Article 29 that State Parties may follow at the time of signature or ratification of the Convention. As a result of this reservation, the other State Parties shall not be bound by that section in respect of Argentina.

### **6.3. The Hague Convention on the Civil Aspects of International Child Abduction**

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<sup>39</sup> United Nations. *Treaty Handbook*. New York: Treaty Section of the Office of Legal Affairs. (2006) page 62.

<sup>40</sup> UN General Assembly. *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*. United Nations Human Rights Office of the High Commissioner. (1999, October 6) United Nations, Treaty Series, vol. 2131, p. 83.

Finally, the Hague Convention on the Civil Aspects of International Child Abduction or Hague Abduction Convention is a multilateral treaty that was finished on 25 October 1980 and entered into force on 1 December 1983. It was created by the Hague Conference on Private International Law (HCCH) with the intention of establishing appropriate provisions for returning children under the age of 16 who have been internationally abducted or retained by one parent from the state they habitually inhabit to another. Although domestic violence is not mentioned in the Hague Abduction Convention, Article 13 b) states that “there is a grave risk that his or her return would expose the child in an intolerable situation”<sup>41</sup> The international Courts’ subjective interpretation of this part of the Conventions seems to be a controversial issue when allegations concerning domestic violence or abuse are reported by mothers in order to offer the justice a justification that may legitimate their decision of taking their children far away from the habitual residence. In such cases, owing to the fact that sometimes there is no corroborative evidence of what happens at home –for instance medical reports, witnesses’ testimonies, physical or medical evidence gathered in legal documents-, the left behind parent defense is successful and, as a result, both the children and their mothers were exposed to emotional, psychological and physical harm.

A recent child abduction deputy in High Court between both a Bosnian and a British mother, who had suffered psychological problems, and a British father poses a clear example of the lack of effectiveness of the Hague Abduction Convention, or at least, the reluctance that displays a great percentage of the public. In the period from 2017 to January 2019, the woman reported several episodes of violence at the British Embassy in Sarajevo against her husband. After multiple proceedings, including a restraining order, divorce and custody of the minor, the mother became mentally affected because of the situation. On

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<sup>41</sup> Hague Conference on Private International Law (1980, October 25<sup>th</sup>) The Hague <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>

December 2019, a report from her psychiatrist, which had been required by her defense on the previous year, was successfully completed.

On August 11<sup>th</sup> 2020, Lord Justice Peter Jackson and Lady Justice Carr agreed on Lord Justice Moylan's statement;

*"in my view it is equally clear that there would be a grave risk of B being placed in an intolerable situation based on the prospective significant deterioration in the mother's mental health if she were to return to Bosnia and their prospective separation"*<sup>42</sup>;

allowing the appeal of the mother and setting aside the children's father order for the little boy relocation in Bosnia under the 1980 Convention, their judgment and approach brought severe disapproval and criticism. In an article provided in the website of the International Family Law Group<sup>43</sup>, Mariana Michaelis's<sup>44</sup> argues that the resolution of the case suggests an absolute necessity in the judicial system, that essentially comprises a rigorous and balanced evaluation of the concepts that appear on Article 13 (b) for the purpose of achieving an effectiveness of the protective measures.

## **7. The Patriarchal System**

Considered as the first structure of domination, subordination and exclusion, patriarchy – "the rule of the father"- is a complex and abstract concept. While some biologists make an attempt to provide factual evidence, statics and theories such as the ENA<sup>45</sup> of variations that arise from gender disparities;

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<sup>42</sup> *Courts and Tribunals Judiciary website* Ms. Deirdre Fottrell QC FD19P00342. Case No: B4/2020/0576. Courts of Justice. **In the Court of Appeal (Civil Division) on Appeal from the Family Court. London. September 2020**

<sup>43</sup> Michaelides, M., Khan, H., Hames, C. *Child Abduction: the Court of Appeal on the Article 13 (b) defense*. The International Family Law Group LPP. London.

<sup>44</sup> Marianna Michaelides is an assistant solicitor at The International Family Law Group LLP and specializes in all matters concerning children including international parental child abduction and international relocation matters.

<sup>45</sup> Conceptual framework that stands for "evolutionary neuroandrogenic" and was first proposed by Lee Ellis in 2005 in a paper known as "A Theory Explaining Biological Correlates of Criminality" published in the *European Journal of Criminology*

psychologists and sociologists postulate that the main cause for the existence of gender roles is socialization. In accordance to the later proponents' understanding of the situation, the patriarchal system is a social construction that has gone from one generation to the next, and whose results are more frequent in cultures where there is a weakening economy. From this standpoint, the nature of patriarchy, as stated by Sylvia Walby<sup>46</sup>, could be observed in different forms within the state, the household, violence, paid work, sexuality and culture.

### 7.1. Characteristics of a Patriarchal System

In an article published on 2015 (Patriarchal System: Definition & Overview), after providing an interesting definition of patriarchal system, the author points out four main aspects of it:

- **Male Dominance:** This conceptual label makes allusion to the historical domestic and universal attitude that men have adopted towards women. Based on a system of thought that has a tendency to establish behavioral patterns guided by ancient values associated with masculinity and femininity.
- **Male identification:** Also called “internalized misogyny”, this phenomenon is the act whereby a whole society is conditioned by the understanding that men – in terms of credibility, status and relevance in most popular episodes- are superior to women.
- **Male Centeredness:** This idea implies that the focus of attention is concentrated on male manners and conduct.
- **Obsession with Control:** It is the condition that allows the male community to preserve the control.

## 8. Social Issues Today

In recent years, the female community has increasingly become the focus for heated debates at an international level. It might be reasonable to make

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<sup>46</sup> Born 16 October 1953, Sylvia Theresa Walby is a British sociologist, currently Professor of Sociology, Director of the Violence and Society Centre at the City University of London. She has an Honorary Doctorate from Queen's University Belfast. She is noted for work in the fields of the domestic violence, patriarchy, gender relations in the workplace and globalization.

allusion to a range of the most crucial issues concerning women in all parts of the world and which seem to pose a formidable challenge for governments.

### **8.1. The Glass Ceiling Effect**

In the first place, even in the 21<sup>st</sup> century, working requirements – including strength and weaknesses –, approaches implemented by members of enterprises, decision- making processes, as well as daily practice in workplaces, reveal sexist and discriminatory attitudes towards women. Despite women’s every endeavor to progress and the genuine and absolute commitment to work displayed, they usually encounter an invisible but impenetrable barrier. This artificial obstacle is best known as the “glass ceiling effect”, which is defined by the United States Federal Glass Ceiling Commission as:

*“The unseen, yet unbreachable barrier that keeps minorities and women from rising to the upper ranges of the corporate ladder, regardless of their qualifications or achievements”<sup>47</sup>*

This global phenomenon is illustrated by the levels of hierarchy, average compensations received in a year of work, contractual requirements imposed and by benefits extended by companies in comparison to men. There are a great variety of ways to make reference to the “glass ceiling effect”, such as “gender pay gap”, “glass escalator”, “sticky floor”, “the frozen middle”, “the second shift” and “Mommy Track<sup>48</sup>”

Glass ceiling and workplace discrimination issues for women.  
Businessman climbing a career ladder

### **8.2. Domestic violence**

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<sup>47</sup> Federal Glass Ceiling Commission (1995, November) *Solid Investments: Making Full Use of the Nation's Human Capital*. Archived 2014-11-08 at the [Wayback Machine](#) Washington, D.C.: U.S. Department of Labor, p. 13-15.

<sup>48</sup> Hill, E. Jeffery; Martinson, Vjkollca K.; Baker, Robin Zenger; Ferris, Maria (2004). *Beyond The Mommy Track: The Influence of New Concept Part-Time Work for Professional Women on Work and Family*. *Journal of Family and Economic Issues*. **25**: 121–136. doi:10.1023/B:JEEL.0000016726.06264.91

A further serious issue regarding women's situation nowadays is domestic violence. According to Phumzile Mlambo-Ngcuka<sup>49</sup>, Executive Director of UN Women, during the worldwide pandemic COVID-19 in Argentina, Canada, France, Germany, Spain, the United Kingdom, the United States, Singapore, Cyprus, New South Wales and in Australia an increase on domestic violence episodes have been reported or denounced. He also mentions that during 2019, 243 billion women and girls between the ages of 15 and 49 were victims of violence. As far as I am concerned, it is not necessary to read between lines to realize that it has consequences in women's well-being, mental and physical health and that immediate measures should be taken. Not only do systems need to foster prevention campaigns, helplines and shelters but they also need to impose severe punishments for those who commit rape, domestic violence, or sexual harassment, or female infanticide. Controlling behaviors, uses of force or coercion in order to manipulate a woman, continuous insults or criticism, threats, intimidation or limiting women's manipulation of family funds need to be punished and not taken as natural episodes.

### **8.3. Gender and religions**

In the third place, as I have previously discussed in the "2<sup>nd</sup> mandatory Assignment: CEDAW Forum" (2020, June 10<sup>th</sup>), child marriage still poses an underlying problem throughout the world. Various religious and ethnic communities in South Asia, Africa, and Latin America honor the commitment to codes of conduct and orthodox doctrines which seriously consider girls inferior to boys. There are a great variety of reasons for this to still exist nowadays. First of all, in various regions of the world girls become fertile and enter in their womanhood in the eyes of their communities from the very moment they have their menarche –first menstrual cycle. Secondly, poverty usually predisposes

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<sup>49</sup> Mlambo-Nacuka, Phumzile (2020, April 6) *Violence against women and girls: the shadow pandemic*, <https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic>

families towards the cruel determination of giving their young girls in marriage so that these could secure their future in every aspect apart from the fact that some of these families may receive a “dowry” or a “bride price” for doing so. Lastly, owing to the high frequency of harassment and physical or sexual assaults, those who are in charge of the female minor are under the impression that she will be protected from being a victim of these heinous crimes if she changes her marital status. In addition to this, another widespread religious practice imposed by Muslims that is considered to be deplorable is the adoption of the hijab – a headscarf which is worn, inter alia, for avoiding male sexual desire.



*A fourth-year anthropology student Damali Stennette wearing a hijab<sup>50</sup>*

## **9. Conclusion**

Taking everything into consideration, it could be said that even worldwide efforts to put an end to discrimination against women as well as to modify the justice system of States in favor of gender equality, there is still a lot of work to do. That is to say that for an international convention to be effective, at both national and international levels, it is fundamental to assess, inform and educate women about their, inalienable and universal, human rights that they have gained and that are nowadays contemplated by international agreements. As important

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<sup>50</sup> Despite experiencing Islamophobia, this girl wears the hijab because, like her race and gender, it is an integral part of her identity. She will join Muslim UCLA students – women and men – in sharing their relationships with the Muslim custom of wearing the hijab through a spoken word performance at the Hijab Monologues on Tuesday in Franz Hall. (Daniel Alcazar/Photo editor)

as this notion is their enlightenment on historical antecedents throughout the years, inter alia, the Second World War.

I expect I have been able to illustrate with convincing documentation what I stated along this conclusion. Having analyzed the United Nations' agreements on women's rights, it is reasonable to highlight the transcendental impact of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Whereas it expresses an integral encapsulation and a particular concern about human rights of women that are appreciated within the 30 articles, it also provides an encouraging response to global issues by its realization in every aspect of life.

If we wish not only to protect women against the restrictions and violations of their rights in a patriarchal society but also to ensure future generations were conscious of their rights, we need an immediate social consensus of what is morally wrong. Likewise, we need to establish the foundations of the assumptions of an inclusive society which fosters values such as respect, consideration, responsibility, empathy, solidarity and truthfulness with each other through the constructive dialogue, and an appropriate and integral education in order to prevent violent episodes in a wide range of collective spheres of influence.



## CHAPTER FOUR: POSITIVE ACTIONS AND INTERNATIONAL HUMAN RIGHTS FOR WOMEN. <sup>51</sup>

*"Whether I am meant to or not, I challenge assumptions about women. I do make some people uncomfortable, which I'm well aware of, but that's just part of coming to grips with what I believe is still one of the most important pieces of unfinished business in human history—empowering women to be able to stand up for themselves."* Hillary Clinton<sup>52</sup>

### 2. Introduction

Our purpose is to define the concept of “positive actions”, and their links to international women's rights and the instruments to influence national decisions on the matter of women's rights.

At the same time this document constitutes a piece of advice: It aims at encouraging and proposing concrete positive actions that could help to get down to earth the immaterial principles and directives regarding human and women's rights from the complex area of international law.

Therefore, not only will we analyze the history of the two most influential women's rights international instruments, but also their objectives, their purposes, and thus we will be able to discover some actions –positive actions- that governments in general, and our government in particular, could implement to make that theory an everyday practice.

First, let us introduce the two most influential women's rights international instruments: The Convention on the Elimination of All Forms of Discrimination

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<sup>51</sup> By Julieta Frick

<sup>52</sup> Van Meter ,Jonathan, “*Profile of Hillary Clinton*” , To Vogue, December of 2009, retrieved from <https://abcnews.go.com/Politics/hillary-comeback-clinton-rival-cabinet/story?id=9145125> Consulted on: 24/08/20.

against Women -from now on: CEDAW- (of constitutional hierarchy) and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women - from now on: the Convention of Belém do Pará- (of infra-constitutional but supra-legal hierarchy in Argentina).

## **2. The Convention on the Elimination of All Forms of Discrimination against Women.**

The Convention on the Elimination of All Forms of Discrimination against Women, or CEDAW, was adopted by the UN General Assembly in 1979.

In the Argentine legal system, CEDAW has a constitutional hierarchy. This is derived from section 75, point 22 of the Argentine Constitution, which states that Congress is empowered “*To approve or reject treaties concluded with other nations and international organizations, and concordats with the Holy See. Treaties and concordats have a higher hierarchy than laws.*”<sup>53</sup>, and between the instruments enumerated that have this kind of hierarchy, it is mentioned “*the Convention on the Elimination of all Forms of Discrimination against Women*”.<sup>54</sup>

This constitutional hierarchy means that every law passed by Congress must conform to and respect the dispositions and principles included in this international document, or else the law will be contrary to the constitution, because, as the mentioned section says, these kind of instruments “*in the full force of their provisions (...) have constitutional hierarchy, do no repeal any section of the First Part of this Constitution and are to be understood as complementing the rights and guarantees recognized herein.*”<sup>55</sup>

According to the United Nations’ (or UN) website, this Convention “*provides the basis for realizing equality between women and men through ensuring*

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<sup>53</sup> Constitution of the Argentine Nation. Retrieved from: <http://www.biblioteca.jus.gov.ar/Argentina-Constitution.pdf> Consulted on: 24/08/20.

<sup>54</sup> Constitution of the Argentine Nation. Retrieved from: <http://www.biblioteca.jus.gov.ar/Argentina-Constitution.pdf> Consulted on: 24/08/20.

<sup>55</sup> Constitution of the Argentine Nation. Retrieved from: <http://www.biblioteca.jus.gov.ar/Argentina-Constitution.pdf> Consulted on: 24/08/20.

*women's equal access to, and equal opportunities in, political and public life -- including the right to vote and to stand for election -- as well as education, health and employment. States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.*"<sup>56</sup> The website also states that it "*is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations.*"<sup>57</sup> This, as we shall see, is no minor matter.

The CEDAW, as well as the Convention of Belém do Pará, commences its text by setting forth the parameter of the rights it announces. To this end, it establishes that the main documents that should be taken into account as a basis of interpretation for every human right that it sets forth are the Charter of the United Nations, the Universal Declaration of Human Rights and the inalienable and universal human rights of dignity, non-discrimination, equality, freedom, the worth of every human person and the equality of rights of men and women.

What makes this instrument special, among other things, is that although it enumerates all these instruments and human rights, as well as declarations; it also recognizes that, sadly, violations against women's rights still exist.

It is not, then, a mere declaration of goodwill, but also a denouncement, a calling into attention of the problematic situation of women's rights in the world, of the continuous influences, cultural, social, economic, political, historical, et cetera, that promotes this situation and prohibits a *de facto* enjoyment for women of the rights that they have as human beings, as citizens, not only of a country in particular, but of the world and the international community in general.

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<sup>56</sup>Text of the Convention on the Elimination of All Forms of Discrimination against Women. Retrieved from: <https://www.un.org/womenwatch/daw/cedaw/cedaw.htm> Consulted on: 24/08/20.

<sup>57</sup> *Ibíd.*

It also recalls the numerous and devastating consequences of this situation: poverty amongst women, discrimination in all areas of life, with little or no access to health, nourishment, opportunities to get or maintain a job, or also climb the ladder of a professional career, as well as many more violations of fundamental human rights that women have to endure day after day, generation after generation, with –in most of the cases- no evident concern from governments, from organizations, from historians, from writers, and all other people who occupy a fundamental or at least relevant role in society.

This instrument sets forth the hope, the proposal, that international cooperation between states could improve women's rights in reality; enhance principles of justice, of non-discrimination and of self-determination, not only of women, but of humanity.

According to this Convention, discrimination against women includes “*any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*”<sup>58</sup>

The international instrument does not focus on enumerating women's rights, but on expressing which are the obligations of the states to ensure them. However, some of the human and women's rights specifically protected by this instrument are:<sup>59</sup>

- Non-discrimination;

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<sup>58</sup> Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979. Retrieved from: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> Consulted on: 24/08/20.

<sup>59</sup> Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979. Retrieved from: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> Consulted on: 24/08/20.

- Equality between women and men, recognized in “*national constitutions or other appropriate legislation if not yet incorporated*”<sup>60</sup>;
- The right to competent tribunals and other administrative and governmental institutions that ensure the protection of women’s right to non-discrimination;
- The right to the same conditions for career and vocation.
- The right of access to studies and achievement of diplomas.
- As for rural women, it establishes the right to health care facilities, information, social security programs, adequate living conditions, access to credits and loans related to agriculture, et cetera.

### **3. The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.**

As it was said before, this instrument has an infra-constitutional but supra-legal hierarchy in Argentina. This means that, unlike CEDAW, it is not in the same legal level as the Constitution, but all law created by Congress should comply with its dispositions and principles, or else it would be against this supra-legal document.

The Convention of Belém do Pará is an international instrument “*adopted by the Inter-American Commission of Women (CIM) of the Organization of American States at a conference held in Belém do Pará, Brazil on 9 June 1994.*”<sup>61</sup>

The Organization of American States (Commonly known as OAS), is a continental organization that was founded to promote, according to article 1 of its Charter, “*an order of peace and justice, to promote their solidarity, to strengthen*

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<sup>60</sup> Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979. Retrieved from: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> Consulted on: 24/08/20.

<sup>61</sup> Belém do Pará Convention. On Wikipedia. Retrieved from: [https://en.wikipedia.org/wiki/Bel%C3%A9m\\_do\\_Par%C3%A1\\_Convention](https://en.wikipedia.org/wiki/Bel%C3%A9m_do_Par%C3%A1_Convention) Consulted on: 24/08/20.

*their collaboration, and to defend their sovereignty, their territorial integrity, and their independence.*"<sup>62</sup>

As it is said in the OAS´ website, it *“came into being in 1948 with the signing in Bogotá, Colombia, of the Charter of the OAS, which entered into force in December 1951.”*<sup>63</sup>

Nowadays, this organization *“brings together all 35 independent states of the Americas and constitutes the main political, juridical, and social governmental forum in the Hemisphere.”*<sup>64</sup>

From the OAS was created the Inter-American Commission of Women (mostly known as CIM), in 1928. According to its Statute, the CIM *“was established by way of resolution of the Sixth International Conference of American States in 1928 as an inter-American specialized organization, of a permanent and inter-governmental nature.”*<sup>65</sup>

According to article 2 of the same instrument, its mission *“is to support the Member States of the Organization (the “Member States”) in their efforts to comply with their respective international and inter-American commitments on women’s human rights and gender equity and equality, so that they are converted into effective public policy, contributing to the full and equal participation of women in the civil, political, economic, social, and cultural spheres.”*<sup>66</sup>

It is from these organizations and instruments, as well as principles, that the Convention of Belém do Pará was born. As we have mentioned, the CIM proposed in its Statute to protect women's rights and gender equality. To this end,

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<sup>62</sup> CHARTER OF THE ORGANIZATION OF AMERICAN STATES. Retrieved from: [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_A-41\\_charter\\_OAS.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS.asp) Consulted on: 24/08/20.

<sup>63</sup> WHO WE ARE, Retrieved from: [http://www.oas.org/en/about/who\\_we\\_are.asp](http://www.oas.org/en/about/who_we_are.asp) Consulted on: 24/08/20.

<sup>64</sup> WHO WE ARE, Retrieved from: [http://www.oas.org/en/about/who\\_we\\_are.asp](http://www.oas.org/en/about/who_we_are.asp) Consulted on: 24/08/20.

<sup>65</sup> STATUTE OF THE INTER-AMERICAN COMMISSION OF WOMEN. Retrieved from: <http://www.oas.org/en/cim/docs/CIMStatute-2016-EN.pdf> Consulted on: 24/08/20.

<sup>66</sup> *Ibidem*.

the Convention of Belém do Pará was created in 1994, and it “*was the first treaty to ever address violence against women.*”<sup>67</sup>

Now, let's focus on what these Convention's main purposes are.

Its fundamental purpose is that human rights in general are respected. This is clear from the introduction of the instrument, where it is stated that these rights have been set down by the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights, both instruments of main relevance in the international field. It also recalls the Declaration on the Elimination of Violence against Women (issued by the General Assembly of the United Nations in 1993).

However, its purpose does not end there. Human rights, in general, are a starting point. But recognizing women's rights, as such, aims at enhancing these latter by creating social conscience on the fact that any kind of violence against women is a violation of human rights, as well as an offense against the most elemental human dignity and honor, all this based on a recognition that – historically, and as it was said in the introduction of this work- these violations are a result or a proof of the unequal opportunities and power relations between women and men.

It also recalls the conviction that the prevention and eradication of violence against women is “*essential for their individual and social development and their full and equal participation in all walks of life;*”<sup>68</sup>

According to article 1 of the Convention, “*violence against women shall be understood as any act or conduct, based on gender, which causes death or*

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<sup>67</sup> Persadie, Natalie (2012). A critical analysis of the efficacy of law as a tool to achieve gender equality. Lanham, Md.: University Press of America. p. 199. ISBN 978-0-761-85809-6. Retrieved 16 July 2015., Retrieved from: [https://en.wikipedia.org/wiki/Bel%C3%A9m\\_do\\_Par%C3%A1\\_Convention#cite\\_note-Persadie\\_\(2012\)-5](https://en.wikipedia.org/wiki/Bel%C3%A9m_do_Par%C3%A1_Convention#cite_note-Persadie_(2012)-5). Consulted on: 24/08/20.

<sup>68</sup> Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará). Retrieved from: <https://www.oas.org/es/mesecvi/docs/BelemDoPara-ENGLISH.pdf> Consulted on: 24/08/20.

*physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”*<sup>69</sup>

What can be derived from this definition is that the scope of application of the Convention is extremely wide, by not restricting itself to an enumerative approach of the kind of violations that it prohibits, but instead merely exemplifying them.

This is the most appropriate approach because making a laxative enumeration would have excluded all the forms of violation to women's rights that could exist in society and culture in general, and thus leave without protection those situations.

The human and women's rights specifically protected by this instrument are:<sup>70</sup>

- The right of every woman to live free from violence in every aspect of life, be it private or public.
- The right to enjoyment, exercise, protection and recognition for women of all human rights and freedoms exposed in international instruments.
- The exercise for every woman of civil, political, economic, social and cultural rights, fully, without restraints and in a free, non-prohibitive or discriminatory way.
- Every woman's right to free education, to oppose stereotyped patterns of behavior “*and social and cultural practices based on concepts of inferiority or subordination.*”<sup>71</sup>

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<sup>69</sup>Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará). Retrieved from: <https://www.oas.org/es/mesecvi/docs/BelemDoPara-ENGLISH.pdf> Consulted on: 24/08/20.

<sup>70</sup>Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará). Retrieved from: <https://www.oas.org/es/mesecvi/docs/BelemDoPara-ENGLISH.pdf> Consulted on: 24/08/20.

<sup>71</sup>Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará). Retrieved from: <https://www.oas.org/es/mesecvi/docs/BelemDoPara-ENGLISH.pdf> Consulted on: 24/08/20.

- The prohibition of discrimination.

This last right will be approached from the perspective of positive actions.

### **3. Positive actions related to women's rights.**

Positive actions, according to Cambridge's online dictionary, are those that "*make education, employment, etc. available to members of groups who have traditionally been treated unfairly, for example because of their race or sex*".<sup>72</sup>

It is related to the concept of "Reverse discrimination", which according to the same source is "*the act of giving advantage to those groups in society that are often treated unfairly, usually because of their race, sex, or sexuality*".<sup>73</sup>

Positive actions are also referred to as "positive discrimination", that is: Discriminating a group of people not for arbitrary reasons, but to turn a *de facto* inequality to a legal inequality, which tends to benefit the social group that is being treated unfairly, or arbitrarily discriminated in reality.

We can describe, then, positive actions as those that give some people (those with a common characteristic, such as race, gender, age, nationality, social position, economic state, et cetera) advantages or privileges, given by law, because of their special vulnerability in society, which renders them, *de facto*, unable to access to the same rights as those who are not discriminated by the positive actions.

Its purpose, then, is to create, from the law, an inequality that reflects favorably in the facts, in everyday life. To create real equality from legal inequality.

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<sup>72</sup> Positive actions, in <https://dictionary.cambridge.org/> Retrieved from: <https://dictionary.cambridge.org/dictionary/english/positive-action> Consulted on: 24/08/20.

<sup>73</sup> Positive actions, in <https://dictionary.cambridge.org/> Retrieved from: <https://dictionary.cambridge.org/dictionary/english/positive-action> Consulted on: 24/08/20.

As we said, these actions tend to be executed to benefit some special group of people. Here we will see how they could be used to benefit women, who in reality have unequal opportunities and treatment from men.

Law is a powerful tool for social change. If properly used, it can provide benefits that promote equality in all sectors of society, not only in public spheres, but also in private ones.

One of the positive actions implemented by the Argentinian government lately has been the General Resolution 34/20 of General Justice Inspection from the Ministry of Justice and Human Rights.<sup>74</sup>

This Resolution, issued on August 2020, established that social entities and commercial societies have to include the same number of women and men in their administrative and controlling organs.

It also foresees the situation in which the number of members of an organ is uneven, in which case it should be composed of members of both genders, with a minimum of one-third of women in it.

This is a very good example of what a positive action should be like: A measure to ensure women a position in society, an important one, not relegated to unimportant businesses but affirming and stating their main role in every area of reality, be it economic, social, political, or, as is the case here, corporative.

However, it must be reminded that positive actions should not be intended to any subject randomly chosen; it must be an effective response to a real problem in reality; to some actual inequality that is going on *de facto* and effectively harming some people's opportunities and rights.

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<sup>74</sup> (O5/08/20). Paridad de género en las entidades civiles y sociedades comerciales. Retrieved from [https://www.argentina.gob.ar/noticias/paridad-de-genero-en-las-entidades-civiles-y-sociedades-comerciales?id\\_curso=137](https://www.argentina.gob.ar/noticias/paridad-de-genero-en-las-entidades-civiles-y-sociedades-comerciales?id_curso=137). Consulted on: 24/08/20.

The aforementioned Resolution has been issued taking into consideration this principle, because it is widely known that historically corporations have more men than women in positions of power. Sometimes there isn't any women in that kind of position at all.

In December of 2019, according to newspaper “*La Razón*”, only 9% of high executives in Argentina were women.<sup>75</sup> These numbers prove the necessity of positive actions in the business field.

### **3.1. Duties of states members according to each instrument. It's possible fulfillment through positive actions.**

The CEDAW and the Convention of Belém do Pará both include some directives to states members in order to promote and protect women's rights in the national sphere.

Article 4 point 1 of CEDAW states that “*Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.*”<sup>76</sup>

These measures are the “positive actions” that we defined earlier in this work. As we can see, these are not optional policies that states can choose not to apply, but rather an international obligation for all those states parties of the

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<sup>75</sup> Beatriz Recio. (29/12/19). Las mujeres no conquistan las posiciones de poder. *La Razón*. Retrieved from: <https://www.larazon.es/economia/20191229/zg5lqret5jc2hcbra5n2qtcrti.html> Consulted on: 24/08/20.

<sup>76</sup> Convention on the Elimination of All Forms of Discrimination against Women. Retrieved from: <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> Consulted on: 24/08/20.

instrument, and also for all the members of the international community, as a way to respect and ensure human rights to all persons regardless of gender.

In this chapter we will propose positive actions that could be taken in order to comply with what we consider one of the most important mandates dictated by international law in relation to women's rights.

### **3.2. Positive actions in public spheres.**

The CEDAW, in article 2 (f), states that Parties should “*take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women,*”<sup>77</sup>

We will focus on customs and practices that reflect discrimination against women, as these are the most insidious and less obvious forms of discrimination.

One of the practices that reinforce discrimination against women is the lack of literature written by women available in public libraries. Although this may sound irrelevant, it is a very important matter: Let’s suppose a child or adolescent wants to go to the library to read or borrow a book; and let us suppose also that this child/adolescent is a girl. All she is going to find in the public library (in most cases) are books written centuries ago, most of them by men, with a retrograde perspective on how women should behave, or the superiority of men; novels that (although classics of literature) show women from a romantic and feminine viewpoint, women who only appear in books to be the romantic interest of the protagonist.

Let us not underestimate the importance and educational power of classic literature, but compensate this anachronic side of them by also including literature

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<sup>77</sup>Convention on the Elimination of All Forms of Discrimination against Women. Retrieved from: <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> Consulted on: 24/08/20.

that enhances women's role in society, informs about women's rights, exemplifies about powerful and successful women in every aspect of life.

Libraries should be the foundation of our culture, books are the keystone of education and entertainment, but also, they should represent nowadays values and progress, being women's rights, and the improvement of their conditions of living in society, some of them.

Also, it should be made mandatory to libraries (by enforcement of law, of course) to spend a minimum of their budgets to buy books written by women. Girls and women who go to the library should also have the option to easily find female authors' books. This is not, sadly, usually the case, and it should be mended.

This practice is not, as shall be noted, an active one (committed by action) but a passive one (committed by omission), because the lack of laws that regulate the investment on human rights' literature and books written by women is an omission that could be easily mended by taking proper action.

Another discriminatory practice against women that can be eradicated by positive actions is the low number of women in positions of power in public or administrative ambiances.

Article 7 of the CEDAW establishes that *“States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referendums and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To*

*participate in non-governmental organizations and associations concerned with the public and political life of the country.”*<sup>78</sup>

In 2017, Argentinian Congress passed the act number 27412, which promotes gender equality in areas of politic representation. It consists of a modification of the National Electoral Code, which establishes that political candidate lists should contain at least 50% of women candidates,<sup>79</sup> intercalated between men, from the first candidate to the last one, so that their can't be two people in continuous order of the same gender in any list.<sup>80</sup>

Similar actions could be taken by creating a national law that extends this same policy to all jobs in the public or administrative area, so that half of public employees are women, respecting always –of course- the constitutional mandate of suitability as a requisite to fulfill such jobs.

This obligation is expressed in section 16 of the Argentinian Constitution, which states that “*The Argentine Nation admits neither blood nor birth prerogatives: there are neither personal privileges nor titles of nobility. All its inhabitants are equal before the law, and admissible to employment without no requirement other than their capabilities. Equality is the basis of taxation and public burdens.*”<sup>81</sup>

### **3.3. Positive actions on mass media regulations.**

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<sup>78</sup>Convention on the Elimination of All Forms of Discrimination against Women. Retrieved from: <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> Consulted on: 24/08/20.

<sup>79</sup> Natalia Del Cogliano | Danilo Degiusti. *OBSERVATORIO POLÍTICO ELECTORAL – DOCUMENTO DE TRABAJO N° 1 La nueva Ley de Paridad de Género en Argentina: Antecedentes y Desafíos*. Retrieved from: <https://www.argentina.gob.ar/sites/default/files/ope-doc1-paridad.pdf> Consulted on: 24/08/20.

<sup>80</sup> (08/03/19). El Gobierno reglamentó la ley de paridad de género en listas electorales. *INFOBAE*. Retrieved from: <https://www.infobae.com/politica/2019/03/08/el-gobierno-reglamento-la-ley-de-paridad-de-genero-en-listas-electorales/> Consulted on: 24/08/20.

<sup>81</sup> Constitution of the Argentine nation. Retrieved from: <http://www.biblioteca.jus.gov.ar/Argentina-Constitution.pdf> Consulted on: 24/08/20.

CEDAW's article 5 establishes that "States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;"

This is a main role of every state of the world, and a very important one, as only Governments have sufficient power to get to choose which kind of message does media and publicity given to society.

Mass media<sup>82</sup> is constantly, and aggressively, influencing women behavior and costumes, and children consume this information practically since they are born. They are told everywhere that they should be thin, should have perfect skin, and should reach their older ages without a wrinkle in their faces, and, if they fail to meet these standards, they should buy every product available and starve as much as possible to fit in society.

And this does not just harm women in private areas, such as their body image (the perception they have of their own body, and the valuative notions they construct around it) but it also follows them to their work place.

As Naomi Wolf said: "*Women, as beauty and work reward them and punish them, never come to expect consistency—but can be counted upon to keep on trying. Beauty work and the professional beauty qualification in the workplace act together to teach women that, as far as they are concerned, justice does not apply. That unfairness is presented to a woman as changeless, eternal, appropriate, and arising out of herself, as much a part of her as her height, her hair color, her gender, and the shape of her face.*"<sup>83</sup>

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<sup>82</sup> Here I do not only refer to TV but also to social media platforms, which are full of advertisements, and to commercials in general.

<sup>83</sup> Wolf, Naomi, *The beauty myth: how images of beauty are used against women*, 2002, HarperCollins Publishers inc., New York, United States of America. First edition in 1991, New York.

This does not mean that the private consequences women have to deal with are less harmful. Mass media and social media provide messages (everyday more and more alarming) of what the female body should look like, and women – most of them receiving this type of messages since they are children or teenagers- do everything in their power to follow those principles.

As Wolf also states in her book, *“But under the beauty myth, now that all women’s eating is a public issue, our portions testify to and reinforce our sense of social inferiority. If women cannot eat the same food as men, we cannot experience equal status in the community. As long as women are asked to bring a self-denying mentality to the communal table, it will never be round, men and women seated together; but the same traditional hierarchical dais, with a folding table for women at the foot.”*<sup>84</sup>

According to the ALUBA (an Argentinian association against bulimia and anorexia), historically, women have been affected by eating pathologies in 90% of the cases, and men in 10 % of the cases.<sup>85</sup>

Taking into account the immensity and harmfulness of these messages from the mass media to women all over the country, it should be one of the top priorities of every State to regulate ( and even censure) these kind of influences from magazines and the industry, in order to allow women (and also men) to grow up in peace with their bodies, and free to choose whatever options they consider proper for their integral health (mental and physical) and not for fashion or to “fit in” society and the image they have of an “ideal” and starved woman.

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<sup>84</sup> *Ibíd.*

<sup>85</sup> Redacción Democracia, (26/03/19). Bulimina, anorexia y el derecho a la salud en Argentina. *Diario Democracia*. Retrieved from: <https://www.diariodemocracia.com/provinciales/201089-bulimia-anorexia-derecho-salud-argentina/> Consulted on: 24/08/20.

### **3.4. Positive actions for women through social security system. Older women's rights.**

The social security system of a state is what indicates the standard of living of the average of the older population.

An institute of such importance should be well taken care of, specially through regulations that allows older people to have an adequate health care system, a place to live in, adequate nutrition possibilities, et cetera.

This is even more important when it comes to older women. As we have said before in this work, and as it is publicly known, historically, that women have been the most relegated of both sexes in matters of opportunities, especially job opportunities. This, combined with the fact that culture and society have, for many years, regarded women as only suitable to have and care for a family (from home), has resulted in many women reaching their older age with little to no amount of money to support them.

This is a very serious problem for various reasons. Firstly, older people – not only women, but also men- need to be taken care of. Their capabilities as well as physical and mental sharpness or strength is not the same (in most cases) as it was before, when they were younger. This means that they cannot work as they did before, and, if they can, possibly they can't do it in the same jobs they were accustomed to.

As a result, the State should provide protection from any form of mistreat against older people, and this includes avoiding older people's necessity to get a job. This is necessary because, sadly, some people take advantage of them due to their usual lack of physical strength and mental sharpness. Older people are in the last stage of the human cycle of life: They are not as strong as they were when they were younger, and this means that they can't defend themselves physically, and can't perform properly in some kind of jobs.

Moreover, older people usually acquire certain types of disabilities (those that come with ageing) that render them incapable for any kind of work.

The lack of a proper social security system is an act of negligence and abandonment of the State, resulting in harm and poor living standards for older persons. This is related to the dignity of all human beings, who should have an income that enables them to live with honor and with all biological needs satisfied.

This right, as well as the others, applies to every older person, regardless of their gender, nationality, religion, color, political or other opinions, etc., but in this case, we are going to emphasize the importance it has for women.

Secondly, it is a very serious problem because when women reach their older ages, if they lived their whole life (or most part of it) raising and taking care of their families, it is very possible that they find themselves with no money to maintain a dignified way of living.

Also, by focusing on creating a better social security system for older women, the State is not only providing better living standards, but also securing the health of the most vulnerable part of its population.

The right to health is especially relevant when it comes to older persons because, as we said before, older people tend to acquire certain illnesses, or even disabilities, that come with the biological process of ageing. This means that they need a system that is accessible and effective, and gives them the financial security that they need, so when they suffer from some of these illnesses (be them physical or physiological) they can get the help needed as soon as possible.

This right implies that states should have the necessary health equipment and health policies that includes promotion of health, prevention and lastly taking care of illnesses and diseases in older people, as well as rehabilitation and palliative care. Also, it should be accessible for every older person, and of quality.

Moreover, it includes the right of sexual and reproductive health for older people, and taking into account their opinion in any medical procedure that they should be subject to; according to this principle, they should also be educated and correctly informed about methods of prevention of illnesses, and knowledge of them, so that when they make those decisions, they can be fully informed and free to choose what treatment do they consider the best for their health.

It ensures that older people enjoy their lives as much as possible, with the highest possible level of well-being (social, physical, mental and emotional).

These rights are especially protected in the Inter-American Convention on Protecting the Human Rights of Older Persons, which was implemented in the Argentinian legal system by act number 27360.

This act also specifies other important rights related to older people, which should be specially respected when it comes to women, because they are doubly vulnerable: Not only are they older people, but also historically discriminated women, and –for the reasons explained before- should get special treatment and protection. These other rights are:

#### **--Right to work**

As we said before, it is common for older people to become incapable of doing some types of work as they get older. However, this is not always the case. Some people can work even when they are very old, maintaining a physical and psychological sharpness that enables them to be very effective at what they are doing. Some of them become no longer capable of doing the kind of work they used to do, but can work at some other type of work instead.

Whatever may be the case, older people should have the right to work. This includes the right to remain in their jobs, no matter their ages, as long as they perform in it effectively, and also to be admitted to other jobs that allow them to make an income and live with dignity.

This also includes the right of older people to have a decent and dignified work; equal opportunities with other workers of obtaining and maintaining it; the prohibition of discrimination or arbitrary distinctions against older persons that violates said equality; and also, the right of participating in labor unions, or creating them.

Moreover, this woman's right is expressed in the CEDAW, article 11, according to which "1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings; (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction."<sup>86</sup>, amongst other rights related to women and work.

### **--Right to property and inheritance**

This is an essential right for every person, considering our capitalist economy. However, for older persons this has an especial meaning. This concept includes the right to independency and autonomy when it comes to personal

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<sup>86</sup> Convention on the Elimination of All Forms of Discrimination against Women. Retrieved from: <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> Consulted on: 24/08/20.

finances and belongings. It's the respect for the autonomy of older persons in making their decisions when it comes to their property, without interferences from third parties if it's not strictly necessary.

According to this right, older people shall not be arbitrarily deprived of their own property or that which they inherit by any form. Especially, they should not be deprived of it on the grounds of age. Moreover, states shall ensure the elimination of administrative and financial practices that violate these dispositions.

As to the right of inheritance, it is related to the right of equal recognition before the law. It implies that states should protect the right of older people to inherit property, control their own finance affairs and have equal access (as well as the rest of society) to mortgages, bank loans, investment, and other forms of financial administration.

This explanation, taking into account all social factors that go against the well-being of older women in today's world, justifies the need of positive actions to be taken. One of them, maybe the starting point for more to come, would be an act of Congress that creates a Social Security System that provides older women with an extra amount of pension, so that they can enjoy their older years in peace and happiness, and, above all, with dignity.

The concrete amount of money that this law should provide is not a matter of discussion that concerns this work, but a political decision. Here we will, however, state that it has to be a reasonable amount that enables older women to enjoy all the rights we have mentioned before.

#### **4. Conclusion**

This work does not pretend to expose all possible positive actions that could be taken in order for women to have a dignified and equal quality of life, according to international standards on the subject. What it does pretend,

however, is to generate conscience and to open the eyes of the reader as to the variety of measures and infinite possibilities that could be available to make women's rights more real, tangible.

Here is presented what the author considers the most urgent positive actions that states should implement to change the way society is raising women, to make the world a better place for all of them, regardless of their age and nationality, and to put an end to a historical, cultural, political, social and economic process of creating inequality between genders, because, as the world gets older, the Human Race should also get better.



**CHAPTER FIVE:**

**THE HAGUE CONVENTION ON CHILD ABDUCTION**

**AND WOMEN'S RIGHTS.<sup>87</sup>**

**4 Introduction.**

The Hague Convention on the Civil Aspects of International Child Abduction is a treaty developed by the Hague Conference on Private International Law (HCCH) that applies to the international abduction of children under the age of 16, by a parent or a primary caretaker from one country to another.

This convention was concluded in 25 October 1980 and entered into force on 1 December 1983. Today it has been contracted by over 100 states.

The convention's end is to protect children internationally from the harmful effects of their wrongful removal or retention. Also, it establishes procedures to ensure the child's return to the State of their habitual residence, as well as to secure protection for rights of access.

In the Convention, a child is considered "abducted" if he or she is removed by one parent without the other parent's consent.

In several cases happens that the abductor is the mother who is scaping from family or domestic violence, and also happens that the Court returns the child even though the parent can't return safely with the child.

In this paper we will approach the Hague convention on the Civil Aspects of International Child Abduction and relate it to the maternal abduction in particularly. Also, we will exemplify this situation with some real cases.

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<sup>87</sup> By María Costanzo. Sent on October 2020.

Firstly, I will explain the object of the Hague Convention. This is mentioned in the Article 1 of the treaty. It literally says:

*“The objects of the present Convention are*

*“a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and*

*“b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States”<sup>88</sup>*

This article means that the Convention seeks to preserve the status quo of the child’s custody arrangement which existed immediately before the wrongful removal or retention.

To accomplished these objects, the Convention says the Contracting States shall take appropriate measures to secure the implementation of the objects of the Convention and use the most expeditious procedures available.

## **5 The wrongful removal of the Child:**

The Convention says that the removal of the child is wrongful when:

*“Article 3 .... a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and*

*“b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention because the child's habitual residence is not the requesting state”<sup>89</sup>*

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<sup>88</sup> The Hague Convention on the Civil Aspects of International Child Abduction. 1980. U.R.L.: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>

<sup>89</sup> The Hague Convention on the Civil Aspects of International Child Abduction. 1980. U.R.L.: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>

Then, the wrongful removal of children occurs when a parent takes the children to another country without the authorisation of the other parent before leaving. Wrongful retention is when the parent does not return the children to the country of habitual residence.

### **3.The return of the child is not bound in several cases:**

In the Hague Article 12 mentions that the child has become well-settled when one year has passed since the child's removal from the petitioning state.

Also, the Hague Article 13 establishes the state is not bound to order the return of the child when:

a) If the left behind parent has acquiesced or consented the removal of the child by the requesting party.

b) There is a grave risk that returning would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The Article 20 supports that the state is not bound to order the return of the child when: The return of child would violate principles of human rights and fundamental freedoms.

This is very important if we think that in several cases the removal or retain of the child is provoked because the mother and the child are expose in their habitual residence to physical or psychological harm that makes an intolerable situation for both of them, violating their fundamental rights and freedoms.

### **5. The Hague Convention on International Child Abduction applied to maternal abduction.**

The Hague Convention on Child Abduction was never meant to be applied to cases involving mother's scaping domestic violence.

It is a fact that the Convention does not mention domestic violence and has no protections for abused mothers. However, 70% of Hague cases have involved mother's scaping domestic violence.<sup>90</sup>

The situation of domestic or family violence can incite a woman, who is a mother, to take her child and leave with him or her the country or habitual residence.

This action has been socially and legally punished. However, in several cases, the mother has a real and serious reason to leave the country with her child, like domestic violence or abuse to her or the child.

The woman and mother who is abused or violented tends to scape with her child when the courts and law enforcement have failed to provide needed protection<sup>91</sup>.

The Child Abduction convention demands contracting states to return the abducted children promptly to their country of habitual residence<sup>92</sup>. Nevertheless, in the case that the abductor is the mother who has fled from domestic violence or abuse, the Court must analyse the concrete situation and attend the exceptions to the return of the Child regarding the Article 13 b) and Article 20 of the Hague Convention, i.e., when the return of a child would make him/her a physical or psychological harm, an intolerable situation or a violation to human rights and fundamental freedoms.

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<sup>90</sup> Masterton Gina. (2019, 20 January). *Fleeing family violence to another country and taking your child is not 'abduction', but that's how the law sees it*. The conversation. Academic rigor, journalistic flair. U.R.L. <https://theconversation.com/fleeing-family-violence-to-another-country-and-taking-your-child-is-not-abduction-but-thats-how-the-law-sees-it-109664>

<sup>91</sup> Jane K. Stoeber. (2017, 21 July). *Most kidnapped children are taken by a parent. That doesn't mean they're safe*. U.R.L.: [https://www.washingtonpost.com/outlook/most-kidnapped-children-are-taken-by-a-parent-that-doesnt-mean-theyre-safe/2017/07/21/8340cefe-6bc9-11e7-b9e2-2056e768a7e5\\_story.html](https://www.washingtonpost.com/outlook/most-kidnapped-children-are-taken-by-a-parent-that-doesnt-mean-theyre-safe/2017/07/21/8340cefe-6bc9-11e7-b9e2-2056e768a7e5_story.html)

<sup>92</sup> Goldman School of Public Policy. University of California, Berkeley. *Information on the Hague Convention*. U.R.L.: <https://gspp.berkeley.edu/global/the-hague-domestic-violence-project/mothers/information-on-the-hague-convention#:~:text=The%20Hague%20Convention%20on%20the,children%2C%20primarily%20by%20their%20parents.&text=The%20Convention%20is%20often%20applicable%20in%20cases%20involving%20abductions%20by%20primary%20caretakers>.

Also, the court may be reluctant to return the child to his/her habitual residence, if the return could result in the permanent separation of the child from their primary caregiver. This could occur if the abducting mother faced criminal prosecution or deportation by returning to the child's home country.

In some countries, if the mother is criminally charged but she was fleeing from a pattern of domestic violence or to protect a child, then she may have an “affirmative defence” to the charge of parental kidnapping. The mother will be probably arrested and charged with the crime of child kidnapping but if she has enough evidence to prove this defence, she could avoid being convicted. Even thought, this can depend on the country’s laws and her specific situation.<sup>93</sup>

In the next part of this paper, I will explain the mentioned situation with some particular and real cases.

## **5. Some real cases:**

### **First Case: AUSTRALIA**

I will call the Mother ‘Fiona’ (although is not her real name)<sup>94</sup>. Fiona came to Australia from New Zealand when she was 19 years old. She got married and had two children.

After her first son’s birth, Fiona underwent a period of domestic violence that was endured for several years.

In 2017, her children were eight and ten, so Fiona decided to leave her husband. In that time, she discovered she wasn’t eligible for government

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<sup>93</sup> Womenslaw.org because knowledge is power. *Parental kidnapping*. 2019, 17 December. U.R.L.: <https://www.womenslaw.org/laws/general/parental-kidnapping/when-you-want-take-your-children-out-state/other-parent-threatening>

<sup>94</sup> Masterton Gina. (2019, 20 january) *Fleeing family violence to another country and taking your child is not ‘abduction’, but that’s how the law sees it*. The conversation. Academic rigor, journalistic flair. U.R.L. <https://theconversation.com/fleeing-family-violence-to-another-country-and-taking-your-child-is-not-abduction-but-thats-how-the-law-sees-it-109664>

assistance because she was not an Australian citizen. As a result, Fiona fled back to New Zealand seeking protection and support.

Her husband immediately issued to have the children back to Australia.

The case was considered as “child abduction” and under international law, the Hague Convention on the Civil Aspects of International Child Abduction.

For being an Australian citizen, Fiona’s husband was provided with free legal representation. So, experienced lawyers worked to return the children to their father in Australia and the New Zealand Family Court cooperated.

Eventually, Fiona was ordered to return her children to Australia to an abusive situation by the Australian court. Her voice was not heard and their domestic violence experience was not believed by the court. Also, she was treated like criminal.

Fiona’s mother had to move from New Zealand to Australia to support her daughter and the children financially, emotionally, and physically. One year later, the Family Court recognized to the husband’s full parental responsibility for the children. So, Fiona returned to New Zealand, broke, devastated and without her children.

## **SECOND CASE: ALSO, AUSTRALIA**

In this case, also in Australia. The woman had fled with her children after years of abuse<sup>95</sup>. She went to Sydney where her family lived

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<sup>95</sup> Masterton Gina. (2019, 20 January). *Fleeing family violence to another country and taking your child is not ‘abduction’, but that’s how the law sees it*. The conversation. Academic rigor, journalistic flair. U.R.L. <https://theconversation.com/fleeing-family-violence-to-another-country-and-taking-your-child-is-not-abduction-but-thats-how-the-law-sees-it-109664>

The Sydney Family Court considered the case as a “Child abduction” under the Hague Convention. So, in 2008, the Court ordered the woman to return her two young sons to the UK, where they had been born.

Days after her return, she went to a refuge with her children. When she was on that way, she was murdered by her husband, on a public street, in front of her children and mother.

### **THIRD CASE: ARGENTINA:**

#### **N. C. R. A. c/ G. A. M. s/ restitución internacional de niños<sup>96</sup>**

In this case, both parents knew each other and started a relationship in 2009. In 2013, they had a child. Since the beginning of the relationship, they both lived in Chile. In 2017 they decided to separate.

In May 2017, the mother and her child travelled to the Argentina Republic with the authorization of the father. When they were in Argentina, the mother told the father her intention to stay in Buenos Aires.

The father started legal actions based in the Children's Rights Convention and the 1980 Hague Convention.

The Mother defended herself affirming that there were a lot of problems in the relationship with the father of her child. She maintained that situations of violence had occurred since the pregnancy.

She reported that the father drank alcohol in excess and also used drugs. She said that the father of her son withheld money for essential expenses, so she travelled to Argentina to work and get money to live her and her son.

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<sup>96</sup> Civil Nacional Court of Appeal, tribunal II. N. C. R. A. c/ G. A. M. s/ restitución internacional de niños. Date: 8-ago-2018. Quote: MJ-JU-M-114045-AR | MJJ114045 | MJJ114045

She also said that in September 2019 she filed a complaint for family violence in which the father's approach to her and the child was restricted.

She also maintained that her son currently has his life mainly in the city of Buenos Aires, where he is in school, carries out sports activities and also has his maternal family.

She considered the exception established by art. 13 of the Convention on Civil Aspects of International Child Abduction was configured, because she and her son were subjected to a situation of violence, placing the child in a situation of physical and psychological danger and an intolerable situation.

Finally, the Civil Nacional Court of Appeal confirmed the previous statement that admitted the international return of the minor. The Court didn't consider the domestic violence situation that the mother claimed, maintaining that there was not any danger or discomfort that would justify rejecting the reinstatement in the terms of art. 13, inc. b), of the 1980 Hague Convention.

The Court stayed it must be a serious and characterized psychological or physical danger, a circumstance that is not verified when the defence formulated by the defendant is directed more to the relationship than to the risk of the treatment of the father with his child. It is necessary that a very delicate situation occurs, that a very accentuated disturbance of the child or young person is verified and that the restitution order has a very severe impact for him.

#### **FORTH CASE: ALSO, ARGENTINA:**

#### **E.S. s/ Reintegro de hijo<sup>97</sup>:**

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<sup>97</sup> Supreme Court of Justice of Buenos Aires. E.S. s/ Reintegro de hijo. Date: 11 June 2013. U.R.L. <https://www.incadat.com/es/case/1305>

**Ruling:** Appeal allowed and return ordered; the removal was wrongful and none of the exceptions had been established.

**Grounds:**

**Habitual Residence – Art. 3:** The Supreme Court considered the habitual residence of the child immediately before the removal was in The Netherlands.

**Rights of Custody – Art 3:** The Supreme Court considered that, according to the Dutch judges understanding, both parents held rights of custody as a consequence of the birth of the child during the validity of the de facto union of the parents registered in the Civil Registry of the town of Amsterdam.

As a result of this right, the decision to move the habitual residence of the child to another country had to be previously informed and consulted with the other parent, who enjoyed the material and substantial rights arising from the right of custody.

**Grave Risk – Art. 13(1)(b):** The Supreme Court noted that the exception must be interpreted in a restrictive and strict way and stated that some of the situations contemplated in the Convention must be proved in order for the judge to deny restitution. In the present case, the mother had not invoked the mistreatment or family violence when answering the request for restitution and had barely mentioned such matters.

Therefore, it concluded that the mother had not proved that her return to the Netherlands would imply a grave risk to the child or that she herself was unable to enter that territory where she had received international judicial assistance and access to housing after the separation. Consequently, the exception was not set.

Finally, the Supreme Court concluded that the child's return to the Netherlands did not constitute a serious risk to him, but that the harmful potential would depend on the traumatic sense or not that the mother gave it.

**Child's objections to restitution - art. 13 (2):** The Court noted that to establish this exception, it is necessary that the rejection of the child be vehement, forceful and decisive, with the consequence that a return would expose him to a serious risk or intolerable situation.

The simple objection of the child to return because he was comfortable and integrated into the new environment was not enough for the judge to deny restitution. The child had been heard by a Court Child Protection Advisor, who did not perceive any emotional disturbance than that normally derived from the rupture that return entails.

## **6. Conclusion**

The 1980 Hague Convention was never meant to be applied to cases involving mother's escaping domestic violence, however, most of these cases involve mother's escaping domestic violence.

Attending to this reality, to decide in this matter, the court should consider general principles of international law, human rights instruments and specially women's rights. The Convention cannot be interpreted in a vacuum, the best interests of the child, and also the women's rights must, always be paramount.

In several countries, including our country Argentina, fleeing domestic violence with their children still causes harsh legal consequences. A woman fleeing with her child across borders can be penalised if she has violated family court orders without a reasonable excuse. A court may vary the orders, order her to pay the legal costs of the other parent, or a fine, and could even sentence her to imprisonment.

However, a mother fleeing from overseas is in a special situation. In all the aforementioned cases, women suffer alone and have no outside or government

assistance. The domestic violence is belittled and unbelieved. Most of the women who escape from domestic violence find themselves in this situation.

All over the world, especially in our country, there has to be a substantial change which allows Courts to see domestic violence as a defence under the Convention.

In my opinion, in these cases, the violence against women must be prevented at a national and international level, strengthening coordination among the women right provided in the CEDAW (The Convention on the Elimination of all Forms of Discrimination Against Women) and the Hague Convention on International Child Abduction with meaningful and far-reaching action, to protect women and their children from domestic violence.





## CHAPTER SIX: WOMEN AND THE RIGHT TO FOOD<sup>98</sup>

### 1. Introduction

This chapter connects the right to food, stipulated in different international treaties, with women's unpaid work, especially in those activities that guarantee the exercise of that right.

There is a special focus in women's leadership in social organizations in Argentina, considering that the experience of those organizations is an example worldwide in this matter.

The conclusion of the article is oriented towards explaining the necessity of developing legal instruments to urge the States to recognize and remunerate women's unpaid work.

International treaties are conclusive when it comes to establishing the right to food. They are also clear when they point out the fundamental role that women play in food production and, therefore, in the tasks necessary for this right to be guaranteed. Even international agencies publish essays, which we will cite in this article, acknowledge the existence of unpaid work performed by women. In this sense, they highlight the care tasks within the home, and point out the importance of striving for adequate nutrition for women and their children.

However, Argentina's experience, aggravated by a context marked by the Covid-19 pandemic, has exposed a socially necessary task carried out mainly by women: guaranteeing the nutrition of the most vulnerable sectors of society through the community kitchens. They are women who, in poor neighborhoods, participate in social and community organizations, and organize soup kitchens

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<sup>98</sup> By Juan Marino

where they distribute thousands and thousands of rations of hot food to face the social crisis generated by the coronavirus.

It is imperative that current regulations recognize this social reality, that has women as the main actor, and endow states with legal instruments so that the socially necessary tasks carried out by women can be adequately developed. This article seeks to contribute to substantiate this position and fight for this perspective.

## **2. The right to food in international human rights treaties**

In its Fact Sheet No. 34, entitled “*The Right to Adequate Food*”, the Office of the High Commissioner for Human Rights of the United Nations and the Food and Agriculture Organization of the United Nations poses that:

*“The right to food is recognized in the 1948 Universal Declaration of Human Rights as part of the right to an adequate standard of living, and is enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights. It is also protected by regional treaties and national constitutions. Furthermore, the right to food of specific groups has been recognized in several international conventions. All human beings, regardless of their race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status have the right to adequate food and the right to be free from hunger.*”

*“At the World Food Summit organized by FAO in 1996, States agreed to halve the number of undernourished people by 2015. They also called for the obligations arising from the right to food as provided for under international human rights law to be clarified. In response, the Committee on Economic and Social Rights issued its general comment No. 12 (1999), which defines the right to food.*”

*In the United Nations Millennium Declaration, adopted by the General Assembly in 2000, States committed themselves to halving the proportion of people suffering from hunger by 2015. In 2004, FAO adopted the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, providing practical guidance to States in their implementation of the right to adequate food.*

*“The right to food can be described as follows: The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its Procurement.<sup>99</sup> The right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear (United Nations Special Rapporteur on the right to food)”<sup>100</sup>*

In turn, the FAO, in the article entitled “The right to food within the international framework of human rights and country constitutions” states the following:

*“The protection of human rights under the constitution is the most effective form of legal protection as this is considered the fundamental or supreme law of a nation. This means that all domestic laws must abide by its provisions and that,*

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<sup>99</sup> Committee on Economic, Social and Cultural Rights, available at: <https://www.ohchr.org/Documents/Publications/FactSheet16rev.1.pdf> version.

<sup>100</sup> “The right to adequate food”. Office of the United Nations High Commissioner for Human Rights. Fact Sheet No. 34. 2010.

*in the event of a conflict, constitutional provisions prevail. Constitutions generally include a declaration of fundamental human rights that both guide and constrain government action. Some recognize the right to food but do so in different ways.*

*“Constitutions may explicitly recognize the right to food as an individual human right of all people (e.g., the Plurinational State of Bolivia, the Republic of Ecuador and the Republic of South Africa) or of a specific sector of the population (the Republic of Colombia recognizes this right in the case of children)”<sup>101</sup>*

We can add that the National Constitution of the Argentine Republic does not exhaustively establish the right to food as such. However, national legislation has made progress in this regard. The Food Emergency Bill passed unanimously in Argentina’s Congress, mentions this right explicitly, and designs a set of measures to guarantee it. This means that the international and national legal order is clear when it establishes that States have the obligation to guarantee the right to food.

### **3. The recognition of women’s role in guaranteeing the right to food**

Different international instruments develop the link between the right to food and the role of women in different aspects.

We quote again from Fact Sheet No. 34:

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<sup>101</sup> “The right to food within the international framework of human rights and country constitutions”. FAO. Right to Food Handbooks. 2014.

*“Women play a key role in achieving food security. Yet women are often disproportionately affected by hunger, food insecurity and poverty, largely as a result of gender inequality and their lack of enjoyment of social, economic, civil and political rights and power. In many countries, girls are twice as likely as boys to die from malnutrition and preventable childhood disease, and it is estimated that almost twice as many women as men suffer from malnutrition.*

*In many countries, women play a central role in food production. For example, in sub-Saharan Africa, women account for approximately 70 per cent of agricultural workers and 80 per cent of food processors.<sup>32</sup> Yet women are in many instances discriminated against in accessing the means for producing adequate food. They are often disadvantaged in inheritance and ownership of land and other property, as well as in access to credits, natural resources, technology, vocational education and training, information and extension services. Because of discrimination, women are also less likely to find and maintain a job with adequate conditions. Their salaries are sometimes significantly lower than those of men, including for identical or similar tasks or for work of equal value. Many women are also employed in the informal sector, for instance in domestic work and self-employment in precarious conditions. These situations undermine their means to purchase food and tend to affect the food security of female headed households particularly seriously.*

*The Convention on the Elimination of All Forms of Discrimination against Women protects women’s equal access to work, land, credit, income and social security, which are essential to ensure women’s equal enjoyment of the right to food. For example, article 14 provides a set of concrete measures to eliminate discrimination against women in rural areas, which create an enabling environment for women to enjoy the right to food. Article 11 protects women’s equal enjoyment of labor rights and article 13 (b) their access to financial*

*resources. ILO conventions, such as the conventions on eliminating discrimination in respect of employment and occupation (ILO Conventions Nos. 100 and 111) also protect women's labor rights".<sup>102</sup>*

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2<sup>nd</sup> Ordinary Session of the Assembly of the African Union, establishes the following:

*"States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to: a) Provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food; b) Establish adequate systems of supply and storage to ensure food security".<sup>103</sup>*

Regarding women's role in food security, the FAO poses that *"assuring women's human rights is a precondition for a just and humane society. It is also a key strategy in assuring food security for all. This is because people's overall access to food is very dependent on the work of rural women. FAO makes a rough estimate that women produce more than 50 percent of the food grown worldwide. Some rural women are farmers on their own account, mainly growing food for family consumption. But the majority of rural women work as "invisible" field hands on family plots. They carry out essential work such as hoeing, planting, weeding and harvesting with simple tools and little outside assistance. This often means*

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<sup>102</sup> "The right to adequate food". Office of the United Nations High Commissioner for Human Rights. Fact Sheet No. 34. 2010.

<sup>103</sup> "Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa". African Union. Entry into Force: 25th November 2005.

*that women have no recognized independent status as farmers and their work is considered as secondary within both the family and society.*

*“The numbers tell a different story however. In sub-Saharan Africa, women contribute roughly 60 to 80 percent of labor in food production, both for household consumption and for sale. In Asia, women account for approximately 50 percent of overall regional food production. In South and Southeast Asia, women play a major role in rice production, generally providing the unpaid family or wage labor needed for sowing, transplanting, harvesting and processing. Throughout the Pacific, women play prominent roles in food marketing and in fisheries. In Latin America, although the workforce in agriculture is declining overall, women still contribute 40 percent of the agricultural supply to the internal market and women's gardens and agricultural plots often constitute the only means of diversifying the family's diet.*

*“Women's active involvement in agriculture usually translates into a heavy workload. Poor rural women can work as many as 16 to 18 hours per day, doing fieldwork as well as handling all their domestic responsibilities. This heavy workload can have a negative affect not only on women's own health but on family nutrition as well.*

*“For example, participatory rural appraisals carried out under a food security and nutrition project in the Luapula Valley of Zambia found that women's work burden is the biggest constraint to household food security in the project area. Poor rural women simply do not have enough time during the day to do everything - work in their fields, which are often distant from their homes, collect water and fuelwood, prepare meals and care for the sick and the elderly. Women have no choice but to cut back on cooked meals and introduce shortcuts in food*

*preparation which have a negative impact on children's nutrition and the overall food security of the household.*

*“One part of the project strategy is to carry out nutrition education and awareness raising in the communities to convince men to take on more responsibility for reproductive tasks such as child care and food preparation. The other part is to support the women's productive activities by providing training, credit and access to improved and appropriate technology to reduce the drudgery of their tasks.*

*“Wage-earning opportunities and formal employment are becoming increasingly important to rural women, but steady jobs are scarce and women's employment rights not adequately protected. Where they do find employment, female wage workers are generally concentrated in low-status, low-skill and low-paid jobs with long hours and poor working conditions. With only a few exceptions, women tend to be paid less than men are. For women with formal jobs, the right to organize is important. But there are few trade unions or other formal organizations that truly represent rural women's interests and respond to their needs”.<sup>104</sup>*

As we can see, international agencies warn not only about the need to guarantee women's right to eat. They also point out that they play a central role in food production and in the feeding of the minors. For this reason, they raise the

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<sup>104</sup> F.A.O.: “Rural women and the right to food”. 2018. Available at: <http://www.fao.org/3/w9990e/w9990e10.htm>

importance of improving the working conditions and wages of women, as a fundamental requirement to guarantee the right to adequate food.

Equality must also be guaranteed in the access to the means of food production:

*“Discrimination against women as food producers has society-wide consequences, because of the considerable productivity losses entailed. Access to productive resources such as land, inputs, technology and services are decisive in explaining the difference in yields between male and female smallholders; the greater ability for men to command labor, both from (unremunerated) family members and from other members of the community, also plays a role. Countries where women lack land ownership rights or access to credit have on average 60 per cent and 85 per cent more malnourished children, respectively. 79 per cent of existing studies on fertilizer, seed varieties, tools, and pesticide use concluded that men have higher access to these inputs. Considerable productivity losses result from discrimination against women in their roles as small-scale food producers, and this is an issue that becomes of vital importance as agriculture becomes gradually feminized, with men often the first ones to exit agriculture and migrate to cities. In 2010, the Food and Agriculture Organization of the United Nations (FAO) concluded that ‘if women had the same access to productive resources as men, they could increase yields on their farms by 20–30 percent. This could raise total agricultural output in developing countries by 2.5–4 percent, which could in turn reduce the number of hungry people in the world by 12–17 Percent’”<sup>105</sup>.*

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<sup>105</sup> “Gender and the right to food”. Olivier de Schutter, UN special rapporteur on the right to food. 2013. Available at: [https://www.ohchr.org/Documents/Issues/Food/20130304\\_gender\\_execsummary\\_en.pdf](https://www.ohchr.org/Documents/Issues/Food/20130304_gender_execsummary_en.pdf)

#### **4. The need to recognize and remunerate the socially necessary work of women**

It should be added, however, that further progress is needed. As pointed out by the United Nations special rapporteur on the right to food, Olivier de Schutter, *“women work more hours than men, although much of the work they perform remains informal, essentially performed within the family, and unremunerated, and thus is neither valued nor recognized”*<sup>106</sup>.

In this sense, we must highlight the bill presented by deputies of the ‘Frente de Todos’ in Argentina, which seeks to create an Assignment for Care Work to *“reach approximately 6,800,000 women and feminized identities through the monthly granting of a monetary benefit of a value equivalent to a Minimum Vital and Mobile Salary”*. If approved, it will constitute an important advance and a precedent to replicate on an international scale.

Now, there is a social phenomenon under development in Argentina that must be considered when proposing progress in the recognition of rights. Women are the protagonists of community kitchens that, in the context of the pandemic, feed hundreds of thousands of people suffering from poverty and unemployment. This is also a socially necessary job, and it is not and will not be recognized by the private job market. Therefore, this work remains unpaid and unrecognized.

If it is the obligation of the states to guarantee the right to food, it should also be the obligation of the states to guarantee the working conditions and wages of the people who work every day so that this right is fulfilled. Developing legal instruments, in this sense, implies taking up the spirit of international treaties and advancing on the expansion of rights.

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<sup>106</sup> “Gender and the right to food”. Olivier de Schutter, UN special rapporteur on the right to food. 2013. Available at:

[https://www.ohchr.org/Documents/Issues/Food/20130304\\_gender\\_execsummary\\_en.pdf](https://www.ohchr.org/Documents/Issues/Food/20130304_gender_execsummary_en.pdf)

Finally, we cite FAO again to establish the main idea that guides this article:  
*“assuring women's human rights is a precondition for a just and humane society”.*





## **CHAPTER SEVEN: WOMEN AND THEIR HUMAN RIGHT TO EDUCATION<sup>107</sup>**

### **1. Introduction**

The objective of our work is to demonstrate the importance of the human rights of girls and adolescents who, due to gender issues, do not have the same opportunities as men. To do this, we conducted an in-depth investigation to show how huge the gap in rights is between men and women. It turns out to be huge since the latter are girls and, as they grow up, they continue to suffer violations of their rights.

As stipulated in CEDAW and the Convention on the Rights of the Child, these rights seek to protect the most vulnerable, based on their gender and because of their age, in order to avoid humiliation, abuse, and discrimination of any kind so their rights are respected, such as the right to privacy, opinion, health, education, and, above all, protection and assistance.

Despite the advances made in the area of human rights, there are still countries in which girls and adolescents do not have rights or are not recognized. Throughout this work, you will be able to see the list of these countries, most of which belong to the African continent. In addition to statistics from the UN and UNICEF confirming, through chilling figures, differences between men and women. Concerning access to education, protection of their health, since girls and adolescents are also victims of child marriages, and violent traditional practices.

Last but not least, education is one of the main tools due to the fact that it allows adolescents and girls to know their rights, to demand respect for them as such and to fight for them. Consequently, this will impact their personal development and their lives.

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<sup>107</sup> By Alva Benavides, Milagros Marisol and Burgos, Débora María Agustina. October 2020

## **2. Girl's Rights**

The main objective of the Convention on the Rights of the Child is to ensure their well-being in all its aspects (life, health, education, etc.) since they are part of the group of vulnerable people because of the fact that they have not yet reached adulthood. But, in the case of child girls, it is necessary to guarantee their rights and to provide them with special protection as they are victims of discrimination, and situations of great inequality compared to the opposite sex. These situations can become even more visible in impoverished countries, or in traditional communities, which do not seek a solution and, in the worst cases, are not interested in finding it, even denying or affecting access to these inalienable rights.

### **2.1. The Right to Education**

Today many girls are still deprived of their right to access this fundamental right, this happens in rural areas or vulnerable contexts. In these countries or regions, schooling for girls is not considered a priority or it is preferred that girls do only housework or help their mother to care for their younger siblings.

According to data provided by UNESCO, from the 57 million boys and girls around the world who do not receive primary education, 31 million, are girls which is more than a half. Of these, 17 million will never go to school. There are three countries in the world that have more than a million girls without access to education: Pakistan, Ethiopia and Nigeria; in these last countries more than 5 million do not go to school.

Despite the significant progress in improving girls' access to primary education (which went from 55% in 2002 to 70% in 2012), United Nations data suggest that in the last decade there was *almost no progress* in solving this issue in some of the poorest countries in the world.

In these countries, girls are expected to work at home taking care of their other siblings, while others are married as teenagers or even as children, thus ending any possibility of receiving training.

### **2.1.1. COUNTRIES WHERE “THE RIGHT TO EDUCATION” IS NOT RESPECTED:**

The **One Campaign** published a ranking of the places where it is most difficult for girls to get an education. The main characteristic shared by these countries is poverty. Women do not have access to health conditions or adequate nutrition, and sometimes they are affected by a displacement due to war or conflict. According to the UN, girls living in conflict zones are twice as likely as boys to miss their education. In the top ten countries - 9 of which are in Africa - the number of girls who do not go to school is much higher than that of boys.

This following classification is based mainly on data from the **UNESCO Institute for Statistics**, on criteria such as ratios of girls without a place in primary and secondary school, the fraction of those who complete both levels, the average number of girls attending the school, illiteracy rates among women, the level of trained teachers in each country, the number of students in charge of each teacher or public institution spending money on education.

- 1. South Sudan:** war and violence destroyed many schools and forced thousands of families to flee their homes.
- 2. Central African Republic:** each teacher has an average of 80 students under their care.
- 3. Niger:** the number of literate women between 15 and 24 years old is 17%.
- 4. Afghanistan:** the country has a wide gender gap and there more boys in school than girls.

5. **Chad:** Numerous social and economic problems tamper girls' access to education.

6. **Mali:** only 38% of girls finish primary school.

7. **Guinea:** the average time of education received by women over 25 years old was less than one year.

8. **Burkina Faso:** only 1% of adolescent girls complete secondary school.

9. **Liberia:** almost two-thirds of the pupils who should study in primary school are out of school.

10. **Ethiopia:** two of every five girls marry before the age of 18.

### 2.1.2. THE CASE OF PAKISTAN

According to the report “**Shall I Feed My Daughter, or Educate Her? - Barriers to Girls' Education in Pakistan**” many girls simply do not have access to education, due to different reasons such as the shortage of public schools, especially for young girls. Nearly 22.5 million children in Pakistan, a country with a population of just over 200 million, do not attend school and most of them are girls. Thirty-two percent of girls of primary school age are out of school in Pakistan, compared with 21% of boys.

Among the factors that prevent girls from going to school, **Human Rights Watch (HRW)** found the following problems: lack of government investment in schools, a shortage of schools, prohibitive tuition prices and related costs, corporal punishment, and the fact that they do not force to implement compulsory education. This international non-governmental organization (**HRW**) also found equality issues in low-cost public and private schools, as well as a lack of government regulation of private schools and high levels of corruption.

In addition to these factors within the education system, girls are also excluded from education due to external factors, that include child labor, gender

discrimination, child marriage, sexual harassment, insecurity, and attacks against female education.

Educated girls are less likely to become premature mothers. The number of children under 17 who become pregnant in sub-Saharan Africa and West Asia would drop by 10% if all girls completed primary school. The number of children under 17 who become pregnant in sub-Saharan Africa and South and West Asia would drop by 60% if all girls completed secondary school.

Girls with higher levels of education are less likely to be married early. If all girls could complete primary school, early marriages would decrease by 14%. Equally, if all girls completed secondary school, early marriages would decrease by two-thirds or even more.

The education of girls and women is the key because it has a strong impact on the development of the societies in which they live and on their future lives. These allow them to get out of poverty, as they will be able to access a job and reduce infant mortality. After all, it has been proven that a mother who can read, with basic knowledge about nutrition, health, and hygiene, is 50% more likely that her son or daughter will survive the first five years of his or her life. Its importance lies on the emancipation of women since education enables them to overcome discrimination. Girls and teenagers who have received education are better aware of their rights. They have greater confidence and freedom to make decisions that affect their lives, improve their own and their children's health and chances of survival, and that increase their job prospects.

In sub-Saharan Africa and South and West Asia, one girl in eight is already married by age 15, and one in seven has already given birth by age 17. Keeping girls in school is one of the most effective means of preventing early marriage and childbearing. Education is as well the main factor in accelerating the demographic transition to lower birth and death rates.

## 2.2. RIGHT TO HEALTH

Through **art. 24** of the **Convention on the Rights of the Child**, in its first paragraph *“The States Parties recognize the right of the child to the enjoyment of the highest possible level of health and services for the treatment of diseases and the rehabilitation of health”*. The States Parties shall endeavor to ensure that no child would be deprived of his or her right to the enjoyment of these health services. Meanwhile, in the subsequent paragraphs, they commit to reduce infant mortality rates, to combat diseases, and to ensure access to all children.

### 2.2.1 FEMALE GENITAL MUTILATION

The case of girls is different because in many countries their right stipulated in **article 24, section 3** of the **Convention on the Rights of the Child**, is not recognized or respected *“The States Parties shall adopt all possible effective and appropriate measures to abolish traditional practices that are harmful to health of the children”*. On many occasions, their right to health is violated due to the traditions of their communities. They force girls to perform this practice, which consists of the removal of the vaginal labia, and the **World Health Organization** describes it as any procedure that hurts the female genital organs for reasons that are not medical.

That is why, according to figures provided by the **U.N** *“One in 20 girls and women have suffered some form of female genital mutilation”*. The consequences of this practice are irreversible such as *irregular periods and bladder problems for life, in addition to recurrent infections and, when the time to give birth comes, they can only do so through a cesarean section.*

Despite the physical consequences, the psychological ones are also present, since, once the mutilation is carried out, it affects their future relationships, their sexuality, and the perception of themselves. Although female genital mutilation is illegal in many countries around the world, it is still practiced

as routine in some parts of Africa, Asia and the Middle East. In other parts of the world where immigrant communities from different countries live, this practice is also common.

### **2.2.2. CHILD MARRIAGE: GIRLS, NOT WIVES**

*"Every two seconds a girl is forced to marry in the world, and in countries like Ethiopia, it is common to do so at the age of seven or eight". – UNICEF*

Another violation of girls' rights that directly affects the right to health and protection is child marriage. This violates **art. 16, subsection 2** of the **Convention on the Elimination of All Forms of Discrimination Against Women** *"Those responsible and the marriage of children will have no legal effect, and all necessary measures will be adopted, including legislative ones to set a minimum age for the celebration of marriage and to make the registration of the marriage mandatory in an official registry"*. In addition to these, the early marriage of girls also violates other treaties such as the Convention against the rights of the child, the Universal Declaration of Human Rights, among others.

Marriage at an early age has serious consequences such as permanent rape, violence by the husband towards his wife and early pregnancies that endanger the lives of young girls. In most cases, they are married to adults who are far beyond their age.

According to UN data, *"The country with the highest prevalence of early marriage is Niger: 76% of women between the ages of 20 and 24 enter marriage or some type of marital union before reaching their 18th birthday. It is followed by the Central African Republic (68%), Chad (68%), and Mali (55%), all located on the African continent. Of the 20 countries with the highest prevalence, seventeen are located in Africa, two in Asia, and one, Nicaragua, in Latin America"*.

Sometimes child marriage can be considered slavery. These occur when girls are bought and sold under the disguise of marriage for sexual exploitation or when they are trafficked through forced marriages.

### 3. Adolescent Rights.

The rights of adolescent girls are expressed in the **Convention on the Rights of Boys, Girls, and Adolescents** and in the **Convention on the Elimination of All Forms of Discrimination against Women** and they are closely related to sexual and reproductive rights. These are often violated and, in most cases, are not ensured by the States. The violation of these is a form of gender violence, with women being the main victims of multiple forms of discrimination while having, at the same time, less effective access to sexual and reproductive health services. That is why sexual violence against women and girls nullifies the exercise of their rights established in regional and international instruments on human rights.

In this last time of intense socialization of attitudes and behaviors marked by gender, there has been a huge interest from adolescents in knowing and asserting their sexual and reproductive rights in relation to being able to decide on motherhood. For this purpose, they have been demanding **comprehensive sexual education** in the schools and have gained access to contraception. At the same time, they face various risks to their sexual and reproductive health whose nature, causes, and consequences are deeply determined by gender. But what are these sexual and reproductive rights? We will discuss them below.

#### 3.1. THE RIGHT TO RECEIVE INFORMATION

International agreements affirm that every person, including adolescent girls, have the right to receive services, guidance, and counseling clearly appropriate for their age group on sexual and reproductive health that allow them to assume their sexuality in a positive and responsible way.

Regarding the decision of how to form their families, women and consequently adolescent girls, have the right to *“Access to specific information*

*material that contributes to ensure the health and well-being of the family, including information and advice on family planning"* according to the inc. h) of Article 10 of the **CEDAW**. In particular, the **Committee on the Rights of the Child** made a general comment No. 4 (2003) on adolescent health and development, specifying that *"States Parties should guarantee adolescents' access to adequate sexual and reproductive information, with the inclusion of family planning and contraceptives and the prevention of sexually transmitted diseases, regardless of their marital status and whether or not they have the consent of their parents or guardians"*. In addition, it has been noted that the requirement for parental consent has led to an increase in illegal abortions among adolescent girls and in several cases recommended that states provide adolescent girls with rehabilitation and counseling services that respond to their needs.

### **3.2. UNCLEAN PREGNANCIES**

Not having access to information related to contraception, venereal diseases, etc., results in unwanted pregnancies, early pregnancies, and abortions that many times end with the death. Despite the obligations contracted by the states, in reality, the problem is much more complex since the rates of unwanted pregnancies in adolescents or early pregnancies in girls have not stopped increasing.

Latin America and the Caribbean is the second region in the world with the highest specific fertility rate in the world 61 per 1,000 women between 15 and 19 years (2015 -2020) vs 109 per 1,000 (Sub-Saharan Africa 45 per 1,000 (world)). This high rate is due to teenage pregnancies; whether they are the product of rapes in young girls that normally occur in the family environment or as a result of the inexperience and ignorance of adolescents.

Access to information about contraceptives established by the **Committee on the Rights of the Child** and **CEDAW** is vital as it directly influences the right of women to decide the number of children and the interval of births, as well as their right to health. The **CEDAW** in its general recommendation **No. 21** (1994), explained that *“[in] order to make an informed decision regarding safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, as well as guarantees of receiving sexual education and family planning services, as provided in Article 10 h) of the Convention”*. Such information must be scientifically proven and non-discriminatory. While physicians have the right to conscientious objection, the protection of this right should not violate the right of women to have accurate and objective information on contraceptives.

### **3.3. ACCESS TO COMPREHENSIVE SEXUALITY EDUCATION**

Formal and informal education should promote relationships based on gender equality and mutual respect, as well as enable adolescents to protect themselves against early and unwanted pregnancies, STIs / HIV, as well as sexual abuse and violence against them.

It is necessary that effective, comprehensive, and continuous education on sexuality, in schools and other educational settings, must be based on the principles of human rights and gender equality, and that responds to the questions and enquiries of adolescents.

Sex education should start early in primary school and be intensified at the higher levels of primary school and secondary school. Topics should address not only the physiological aspects of sexuality and reproduction but also the emotional aspects of intimate relationships, various sexual expressions, and self-esteem, as well as teaching decision-making to avoid future abuse or deception.

### 3.4. ARGENTINIAN MEASURES

Even though in Argentina the obligations do fulfill through laws bounded to public health such as **Law 25.673 "National Program for Sexual Health and Responsible Procreation"** and **Law 26.150 "National Program for Comprehensive Sexual Education"**, it is still increasing the rate of adolescent premature pregnancy.

The first one recognizes the Right to Sexual and Reproductive Health as the possibility of developing a rewarding sexual life without correction, as well as preventing unplanned pregnancies. Through this law, free access to contraceptives and information on venereal diseases is allowed.

The second one, referring to the educational field *"led to the adoption, by the State, of a policy aimed at promoting education for responsible sexuality from a gender perspective, also including aspects of sexual diversity. It is a right of boys, girls, and adolescents of all schools in the country, private or state, confessional or secular, initial, primary and secondary level since it promotes scientific and socially significant knowledge, helps boys and girls to understand their growth process, and to feel accompanied in their development and in caring for their health"*.

Thanks to the National Quota **Law No. 24.012 / 91**, Argentina has advanced in these years in providing greater participation to women, who can make a change to those that now are little girls, but in the future, they will be women.



## **CHAPTER EIGHT: CEDAW AND ITS IMPLEMENTATION IN DOMESTIC LEGISLATION IN ARGENTINA. THE 26487 ACT. <sup>108</sup>**

### **1. Introduction**

The socio-cultural changes of the last centuries have modified the behavior of human beings in an attempt to improve their living conditions. The main focus of these changes is to eliminate discriminatory attitudes toward women, that perpetuate or condone gender-based violence, and to promote gender equality. From our perspective, even though aggressions and unequal power relations over women seem to have disappeared, these serious problems remain in our society. Even in the present day, many women around the world still live-in fear and suffer different types of violence from their perpetrators, causing great harm to their integrity and dignity. For this reason, non-governmental organizations, international organizations, States, and other stakeholders have cooperated to develop public policies that promote and guarantee the right of women to enjoy a life without violence.

In Argentina, Act No. 26.487 protects women from violence in all spheres of their life and also guarantees the rights and fundamental freedoms enshrined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This Convention is prior to the Argentine Act and serves worldwide to provide an integrated legal framework for the different States that adhere to it. Both are fully related due to their comprehensive dimensions and the decisive role they play in facilitating and improving women's living conditions.

### **2. Background**

#### **2.1 The CEDAW Convention**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an international treaty which was adopted by the UN General

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<sup>108</sup> by Claudio Agustín Quevedo, Gabriela Fernanda Alvarez, Valeria D'Agata.

Assembly on December 18, 1979 and entered into force on September 3, 1981. It consists of a Preamble and 30 Paragraphs. Currently, 189 nations have ratified the Convention, making it one of the most widely ratified human rights treaties. As regards Argentina, it ratified it on July 15, 1985 (Act No. 23.179) and incorporated it into the amendment of its national Constitution in 1994 (Act No. 24.430).

Moreover, it is worth mentioning that the adoption of CEDAW encouraged the creation of other international instruments that aimed to protect women's human rights, such as the Rome Statute of the International Criminal Court (or the Rome Statute) which broadens the definition of gender-based violence as a crime against humanity in armed conflicts. At the regional level, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (also known as Convention of Belém do Pará) was adopted in 1994 and entered into force in 1995.

It is the only treaty that aims at eliminating violence against women by imposing penalties on perpetrators and taking all the necessary measures to modify or enact existing or new legislation against gender-based violence. Furthermore, CEDAW has served as a model for the enactment of Argentinian acts, protecting the rights of other members of society and prohibiting direct and indirect discrimination against women in several aspects of their lives—politics, family, health, and employment.

The Convention reflects more than thirty years of work by the United Nations Commission on the Status of Women, an intergovernmental body established in 1946, promoting women's rights and empowerment. The mission of the Commission is crucial as it identifies and reports cases of gender discrimination against women around the world, and establishes standards to achieve equality between men and women in all areas of life. In order to guarantee the full enjoyment of women's rights, several declarations and conventions have been adopted and ratified, of which CEDAW is often considered an international

bill of rights for women as it establishes a comprehensive set of rights and procedures to combat and eradicate discrimination. The Convention is built on the foundation of the ideals stated in the Preamble of the UN Charter: to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women. This is why the core principles of CEDAW are non-discrimination, substantive equality and state obligation. Furthermore, the main objective is to prohibit discrimination against women and violation of human's rights and fundamental freedoms.

To clarify this, the Convention defines discrimination in Paragraph 1 as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” Without an understanding of these three key principles, CEDAW cannot be applied properly. These principles emphasize that women must enjoy equality in reality, in their everyday lives. It is not sufficient to have laws and policies promoting equality rights, if inequality based on gender exists in women's lives. Therefore, the Convention's goal is to recognize and achieve both *de jure* and *de facto* equality between men and women.

- Substantive Equality

The concept of substantive equality is interpreted by the CEDAW Committee to mean *de facto* equality (equality in fact or actual equality) or equality of results. If laws do not ensure substantive equality, they do not comply with CEDAW. Accordingly, state parties to the Convention have the obligation to modify existing legislation or enact new legislation in order to provide equal opportunities for women in such a way that they result in substantive equality.

- Non-discrimination

It is a key principle which is defined in Paragraph 1 of the Convention. The Paragraph thereof emphasizes the idea that violence is triggered by gender-based discrimination.

Moreover, CEDAW forbids the following types of violence:

(a) Direct discrimination. It occurs when an act or omission has the “purpose” of discriminating against women, for example unequal pay and unfair dismissal on the grounds of age or marital status. In other words, this type of discrimination happens when someone has a protected characteristic (sex or race), thus being treated unfairly in comparison with other people.

(b) Indirect discrimination. It refers to an act or omission that has the “effect” of discriminating against women or has the “impact” of being discriminatory. For example, in some cultures or religions there are norms or rules that are detrimental for women because they have a protected characteristic. Therefore, they face barriers when they want to apply for a bank loan, when they want to lead an independent life, when holding office in a court or tribunal, and when they want to participate in trade unions or political parties.

(c) Multiple discriminations. There various types of discrimination besides gender discrimination based on religion, age, marital status, race, ethnicity, disability, social class and other factors.

- State obligation

This third principle emphasizes that State parties to CEDAW undertake to adopt appropriate measures to ensure that *de facto* and *de jure* equality between men and women is achieved and discrimination is eliminated. Even though States, organizations and other stakeholders must monitor that domestic legislation is enforced effectively under the provisions of the treaty, the State is

only held accountable, including the executive, legislative and judicial organs, as well as local government units.

## **2.2 Content and structure of the Convention**

The CEDAW Convention presents a preamble and 30 Paragraphs. The structure is as follows:

Substantive obligations (Paragraphs 1-16)

General obligations of the State (Paragraphs 1-5):

- Paragraph 1: definition of discrimination;
- Paragraph 2: modification and/or enactment of existing or new legislation, legal protection of women, elimination of discriminatory practices, customs, laws and regulations;
- Paragraph 3: measures for the achievement of gender equality;
- Paragraph 4: temporary special measures to accelerate the achievement of *de facto* equality;
- Paragraph 5: State's obligation to change discriminatory patterns of behavior and patriarchal attitudes pervading the social fabric.

Specific obligations of the State (6-15):

- Paragraph 6: measures to eliminate trafficking and exploitation of prostitution;
- Paragraph 7: elimination of discrimination in political and public spheres;
- Paragraph 8: women's right to represent the government at the international level and participate in international organizations;
- Paragraph 9: women's right to acquire, change or retain their nationality;

- Paragraph 10: equal access to education of all levels, unbiased examinations, and elimination of gender and cultural stereotypes in school books and other materials;
- Paragraph 11: equal employment opportunities, right to a safe working environment, and prohibition of discrimination at the workplace on the grounds of marital and pregnancy status;
- Paragraph 12: equal access to health care services, including reproductive health services;
- Paragraph 13: access to economic and social benefits (bank loans and credits), and participation in recreational activities, sports and cultural life;
- Paragraph 14: elimination of discrimination against women in rural areas;
- Paragraph 15: equality before the law;
- Paragraph 16: equal rights and responsibilities in marriage and family relations;

Regulations related to the CEDAW Committee, its functions and procedures (Paragraphs 17-22):

In this section of the Convention, the Paragraphs assert that all State parties must take all necessary steps to modify domestic legislation or implement policies that are compatible with the treaty. They also establish the main functions of the CEDAW Committee, and the procedures for monitoring and ensuring the implementation of the Convention in the State members' domestic legislation.

Regulations related to administration, interpretation and other matters (Paragraphs 23-30):

These last Paragraphs address issues about disputes arising out from the interpretation and application of the treaty. They also specify the reservations and ratification.

### **2.3 Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women**

The General Assembly adopted a 21-Paragraph Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women on October 6, 1999, and urged all States parties to the Convention to adhere to the new instrument. The Optional Protocol entered into force on December 22, 2000, after the tenth State party to the Convention ratified it. As regards Argentina, it was signed on February, 28, 2000, and ratified on March 20, 2007.

The purpose of the Protocol is to complement or add new concerns to the main treaty, to fully address a substantive area, impose new obligations upon the State parties, and establish procedures for the enforcement of the Convention.

By ratifying the Optional Protocol, a State recognizes the competence of the Committee on the Elimination of Discrimination against Women to receive complaints from individuals, or groups, that allegedly report violations of women's rights enshrined in the Convention within its jurisdiction.

In order to achieve full compliance of the provisions set forth in the Convention, the CEDAW Committee highly recommends all States parties to review their legislation and

enact new laws that are compatible with the treaty. Therefore, the State is bound to amend those laws that are discriminatory and adopt legislative reforms so as to ensure the direct application of the Convention in its domestic legal system.

Regarding the communications procedure, when a woman or a group of women claim that their rights under the Convention have been violated, they can submit individual complaints in writing to the Committee for review and consideration. In order to be admitted for consideration, all available domestic remedies must have been first exhausted. The Committee is also allowed to conduct inquiries into situations of grave or systematic violations of women's rights. It is important to mention that States must be party to the Convention and the Protocol.

Afterwards, the Committee presents its views (decisions on the case) to the individual and the State party, while making recommendations to said State Party, including law reforms, remedial steps or measures to prevent and ban discriminatory practices. The Committee proceeds to ask the State party to respond to the complaint and provide explanations in a report within six months after receiving the Committee's views and recommendations. In the report, the State party must detail all the steps taken to redress the wrongs inflicted upon the complainants. Finally, the Committee can request further information in the form of periodic progress reports.

### **3. Argentinian Act No. 26.485**

Since the ratification of CEDAW and incorporation thereof into the National Constitution of 1994, several laws have been enacted. For example, in 1994 the National Congress sanctioned the Act No. 24.417 on domestic violence called *Protection against Family Violence*. This act recognizes that violence is a public matter, whereby the State and all relevant stakeholders, including the victim, have the obligation to report physical or psychological abuses perpetrated by a victim's family member. Furthermore, the act provides the complainant with protection orders or injunctions, such as non-molestation orders and occupation orders.

After this act came into force, different provincial acts on violence against women were passed during the '90s. On March 11, 2009 the Argentinian Act No. 26.485 called *Act on Comprehensive Protection to Prevent, Punish and Eradicate Violence against Women in Areas where they Develop their Interpersonal Relationships* (in short, *Act on Comprehensive Protection for Women*) was passed and came into force on April 1, 2009. It protects and promotes women's right to enjoy a life free from violence and discrimination in all its forms and manifestations. It also guarantees all the rights recognized in CEDAW, the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women, the Convention on the Rights of Children (incorporated into Argentinian Law by Act No. 24.632 in 1996), and Act 26.061 on the Comprehensive Protection of the Rights of Children and Adolescents. Furthermore, in the last decades, CEDAW brought about major domestic legislative and institutional reforms, such as the creation of the "*Consejo Nacional de las Mujeres*" in 1992 (National Council of Women).

It is important to recall that CEDAW was given constitutional rank by being incorporated into the amendment of 1994. The National Constitution marked an important milestone for the recognition of women's rights and set a precedent for the Act on Comprehensive Protection for Women and other acts by providing key Paragraphs:

- The principle of real equality of opportunity between men and women in holding public and political offices (Paragraph 37);
- The promotion of the democratic values and equal opportunities and chances without discrimination whatsoever (Paragraph 75, Section 19);
- The principle of real equality of opportunity and equal treatment in general, and the promotion of affirmative action measures as a means of guaranteeing equality (Paragraph 75, Section 23);
- A constitutional barrier to decreasing minimal quotas as set forth in Quota Act (Paragraph 37).

The act aims at modifying the socio-cultural and discriminatory patterns of behavior which lead to inequality and power relations over women. It also establishes public policies that provide judicial accessibility to women, who suffer violence, and integral assistance inside official and private areas.

It also coordinates the work of ministries, secretaries, the three branches of government, and national, provincial and local jurisdictions to combat violence against women. Furthermore, the act develops an integrated approach to this problem, such as training for public officials, support services for complainants and survivors (social, legal, medical and psychological assistance), collection of statistical data, and measures that are necessary to prevent, condemn and stop gender-based violence.

In accordance with Section No. 2, the act promotes and guarantees to:

- Eradicate discrimination between men and women in all spheres of life;
- Protect women's right to a life free from violence;
- Develop effective measures to sensitize, prevent and punish and eradicate discrimination and violence against women in all its forms and manifestations;
- Implement interinstitutional public policies on violence against women;
- Eliminate socio-cultural patterns that lead to and maintain gender inequality and power relations over women;
- Provide access to justice for women who suffer violence;
- Offer women comprehensive and integrated assistance services, either public or private, and specialized services on violence.

### 3.1 Types of violence against women

In Paragraph 5 of Act No. 26.485, different types of violence are defined as follows:

1. **Physical violence.** It may be defined as any act that uses physical force against women causing pain, harm or danger, and any other form of mistreatment or aggression that affects their bodily integrity.

2. **Psychological violence.** It may be defined as any act that causes emotional harm and low self-esteem, affects and disrupts women's full personal development and seeks to control their actions, behavior, beliefs and decisions through threats, abuse, harassment, limitations, humiliation, dishonor, discredit, manipulation and isolation. It also includes blaming, constant surveillance, demand of obedience and submission, verbal coercion, stalking, insulting, indifference, abandonment, extreme feelings of jealousy, blackmail, ridicule, exploitation and impediment to women's freedom of transit or any other means that affect their psychological well-being and self-determination.

3. **Sexual violence.** It is any action that involves the violation of women's right to freely take control over their sexual or reproductive lives in all its forms, with or without sexual penetration, through threats, coercion, the use of force or intimidation, including rape committed by their husbands, intimate partners or any other family or household members, whether residing together or not, as well as forced prostitution, sexual exploitation, slavery, harassment, abuse and trafficking of women.

4. **Economic and patrimonial violence.** It is any act that affects women's economic and patrimonial life through:

a) The interruption of possession, ownership or property of their assets;

b) The wrongful loss, subtraction, destruction, retention or diversion of objects, work instruments, personal documents, goods, values and patrimonial rights;

c) The limitation of financial resources used to satisfy their needs or deprivation of indispensable means to enjoy life.

d) The limitation or control of their profits, as well as the lower pay for the same task at the same workplace.

5. **Symbolic violence.** It shows or reproduces domination, inequality and discrimination through stereotyped patterns, messages, values, symbols or signs in social relations, thus normalizing the subordination of women in society.

In Paragraph 6 thereto, different modalities or forms of violence are defined, that is to say the ways in which the types of violence mentioned above are committed against women in the public and private spheres of their lives.

1. **Domestic violence against women.** It is inflicted upon women by a family member, regardless of the space where it occurs, which harms their dignity, well-being, bodily, psychological, sexual, economic or patrimonial integrity, and freedom, including reproductive freedom and the right to women's full development. The term "family group" is understood as those members related by consanguinity and affinity, including marriage, informal marriage, intimate partners and romantic relationships.

It also includes current or past relationships, either cohabiting and non-cohabiting.

2. **Institutional violence against women.** It is committed by public officials, professionals, personnel and officers from any public institution, organization or body, as well as political parties, trade unions, and business, sports and non-profit organizations, which aims to impede, obstruct and hinder women's access to public policies and exercise of their rights set forth in the act.

3. **Workplace violence against women.** It is defined as any act or omission that discriminates against women in public or private workplaces and obstructs their access to employment, recruitment, promotion, stability or continuity at the workplace, on the basis of their marital and pregnancy status, maternity, age and physical appearance. The denial of their right to equal pay for the same task or position also constitutes workplace violence. Furthermore, it includes psychological harassment which involves systematically attacking a specific worker in order to make her resign her post.

4. **Violence against reproductive freedom.** It is the violation of women's right to freely and responsibly decide the number of children or the interval between births, as set forth by Act No. 25.673 on *The Creation of the National Programme for Sexual Health and Responsible Procreation*.

5. **Obstetric violence.** It is inflicted by health-care professionals upon women's body and reproductive processes, in the form

of dehumanizing treatment, abusive medicalization and pathologizing of natural processes, pursuant to Act No. 25.929.

6. **Violence against women in the media.** It is any stereotyped message and image published and spread through the mass media, which directly or indirectly promotes the exploitation of women or their images, destroys, undermines, violates, offends or threatens women's dignity, as well as the use of women, adolescents and children in pornographic messages and images, legitimizing unequal treatment or establishing socio-cultural patterns that are derogatory and discriminatory against women.

The act dictates that national and provincial executive ministries and secretaries to design and implement public policies in conjunction with the Areas of Women of each jurisdiction. Furthermore, the judiciary and public ministries are obliged to introduce policies aimed at preventing violence against women.

Paragraph 7 of Act No. 26.485 provides that the three branches of government, either at national or provincial level, are obliged to implement intersectoral public policies and apply the following guiding principles:

- Eliminate discrimination and unequal power relations between men and women;
- Adopt gender-sensitive measures in society, promoting equality and stopping violence against women;
- Provide appropriate integrated support services for women who suffer any kind of violence, granting free, easy, quick and effective access to specialized services, as well as punishing and educating perpetrators about violence;
- Apply the principle of mainstreaming to measures and regulations by an intersectoral team and through budget allocation;

- Promote cooperation and participation of non-profit organizations, involving private institutions and non-state public actors;
- Respect for the right to confidentiality and intimacy, prohibiting the use, reproduction and disclosure of information related to violence against women without the victim's authorization;
- Guarantee the availability of financial resources to achieve the goals established in the present act.

Not only does the national government undertake to coordinate efforts but also to ensure the availability of resources and services. Pursuant to Paragraph 10 of Act No. 26.485, the State must promote and strengthen cooperation among institutions in jurisdictions of all levels in order to provide integrated support services for women who experience violence and for their perpetrators, guaranteeing:

- Raising-awareness campaigns aimed at educating and sensitizing the community about interpersonal violence against women, as well as preventing it;
- Units specialized on violence that prevent and deal with violence against women, which will coordinate activities as established in standards, protocols and records while adopting an integrated approach to the following activities:
  - Interdisciplinary assistance to evaluate and define strategies of approach;
  - Peer support groups;
  - Free legal assistance and representation;
  - Attention coordinated with the health sector providing medical and psychological assistance;

- Attention coordinated with the social sector offering programs that foster human development.

- Financial support programs for women's autonomy;
- Community counselling programs aimed at granting women's autonomy;
- Integrated service centers for women dedicated to fostering women's empowerment;
- Shelter or refuge places for survivors of domestic violence who cannot stay at home because they are at great risk of suffering physical, psychological or sexual harm, and their family is in danger as well, which are dedicated to their rehabilitation and reintegration;
- Re-education programs for perpetrators.

Concerning access to justice and secondary victimization of the complainant or survivor, they are considered barriers for women due to the fact that laws and public officials are not sensitive to gender issues. Besides, they find it hard to receive protection and compensation from justice. The act provides that women's access to justice. In accordance with Paragraph 16 thereto, women must enjoy the following rights:

1. To timely and expeditious legal proceedings which ensure that victims do not suffer violence anymore and receive compensation;
2. To free legal aid;
3. To be heard personally by a judge;
4. To be considered as a witness;
5. To receive judicial protection without delay;
6. To the protection of their privacy and the confidentiality of their case;
7. To participate in the legal proceedings, receiving relevant details thereof;

8. To be treated fairly and not be discriminated so as to avoid secondary victimization;
9. To be ensured a fair legal process in which the onus is on the perpetrator;
10. To refuse to undergo medical examinations that are not relevant for the case;
11. To report breaches of judicial authorities' obligations due to judicial delay and procedural irregularities.

This comprehensive act brought about a paradigm shift in the approach to violence against women in Argentina, introducing a broader concept of violence. Since this act came into force, provincial governments have enacted local legislation that considers specific contexts in which violence takes place.

According to the Argentinian government, it was conceived as a long-term strategy to face the systematic violation of human rights, since in 2008 a survey carried out by Amnesty International based on news published in ten Argentinian newspapers identified at least 120 deaths of women at the hands of their partners or former partners.

Unfortunately, the act has been criticized by feminist groups for misapplication or lack of law enforcement by the government. Some reports show that women still experience discrimination by some groups of society and state organizations. In reaction to these negative comments, the government has ordered some ministers to take appropriate and effective measures to enforce the act.

#### **4. Conceptual differences between 26.485 Act and CEDAW**

The structural relationships and connections between the Paragraphs in both documents are due to the different aspects that they cover. The substantive aspects are those where the norms of behavior and their penalties for breaking them are made explicit. CEDAW and 26.485 Act establish their methodological procedures to obtain the desired result, for both of them define terms to create a legal framework, in other words they determine their field of action. The determination of objects and concepts allow both documents to belong to the same legal field. Knowing their limits, it is possible to know when, where and why they are applicable.

In its first Paragraph, the Convention explicitly acknowledges that discrimination against women is the "distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women", and emphasizes that such discrimination attacks "human rights or fundamental freedoms in the political, economic, social, cultural, civil or any other field". In Paragraph 4 of 26.487 Act, violence is defined as "any conduct, action or omission, which directly or indirectly, both in the public and private spheres, based on an unequal relationship of power, affects their life", and emphasizes that "those perpetrated by the State or by its agents are included."

The act guarantees and recognizes the rights contained in the Paragraphs of the Convention which allow it to defend its content in an international context, responding to any criticism by misinterpretation.

However, the big difference between CEDAW and the act is that the Convention defines discrimination, whereas the Argentinian act explains the meaning of violence, creating a little space in the documents to avoid responsibilities or to be used as a legal gap. Furthermore, the word 'violence' does

not appear anywhere in the treaty, while in Paragraph 5 of the act there are five types of violence which are mentioned, making the meaning clear and explaining the ways in which violence is inflicted upon women. Additionally, manifestations of violence in the convention are not described like in the Argentinian act where the modalities and manifestations of violence are explained in detail in Paragraph 6.

It is important to highlight these differences, which are not minor, since the production of clear and precise definitions allows us to clearly identify the concepts with which we are dealing and also to apply various pieces of reasoning in a more precise way. At the same time, the documents show that they differ in fundamental concepts and have small conceptual gaps that interfere in the application of both the law and the convention.

To be clear, violence is a form of discrimination, but some manifestations of discrimination against women (such as poverty, lack of access to education, financial dependence, belonging to marginalized sectors of the population, among many others) can constitute risk factors for women who suffer abuse and exploitation, establish or remain in violent relationships, which reduce their capacities to get out of these situations. On the other hand, the violence they suffer in the physical, psychological, sexual, economic or patrimonial sphere can be decisive to reinforce their low position in society or their lack of empowerment. For example, violence in the private sphere can influence women to maintain positions that make them more likely to face discrimination in the community. Therefore, violence against women is considered an extreme form of discrimination.

The problem of violence against women is complex, so there is no single explanation or cause. Nevertheless, it is necessary to recognize that it is a structural problem, not due to a random situation, but to multiple and old factors. It permeates all social sectors, and its roots are in the very organization of society. This historical discrimination, which occurs in different cultures and regions over

the centuries, is based on the system of social organization called “patriarchy” which refers to the existence of power relations. In this system, a binary order is established that opposes men and women, assigning them different values, behaviors and activities based on their sex.

In patriarchal societies, violence against women in its different manifestations is used as a control mechanism that seeks to maintain the subordination of women, and their low or limited value within the system, thus pervading every aspect of women’s lives. The discrimination that women suffer in this system, just because they are women, can be increased by economic condition, sexual orientation, race, disability, nationality, age, etc., preventing the full exercise of their human rights.

It is worth mentioning that Argentinian lawmakers considered the examples provided by comparative law in the second generation of norms and the general guidelines stipulated by the Convention of Belém do Pará concerning the comprehensive list of various forms, modalities and spheres of gender-based violence. However, in contrast to the Convention of Belém do Pará where the different types of violence are outlined, Act No. 26.485 specifically defines the manifestations of violence. Besides, the classification of violence into distinct categories under the act should not be construed as restrictive but merely illustrative. In other words, the act should not exclude other types of violence against women included in other pieces of legislation and comply with the provisions stipulated by international treaties to which Argentina is adhered, and protocols and recommendations thereof.

Even though the act mandates the government to implement coordinated public policies in order to prevent and end gender-based violence in all its forms and manifestations, some types of violence are given prominence over others, such as domestic violence perpetrated by former or intimate partners and violence in the media, and to a lesser extent, employment violence or institutional violence.

## 5. Statistics

The Act No. 26.485 addresses the need to collect statistical data on cases of violence against women in order to monitor the effectiveness of legislation and develop indicators on violence against women through interjurisdictional and interinstitutional collaboration. In compliance with the act, as of September 12, 2012, the National Institute of Women (Instituto Nacional de las Mujeres or INAM) and the National Institute of Statistics and Censuses (Instituto Nacional de Estadística y Censos, in short INDEC) entered into an agreement whereby INDEC undertakes to provide statistical information on violence against women through a single national databank gathering scattered data from different institutions, either at the national, provincial and municipal level, which record cases of gender-based violence against women, creating the Single Registry of Cases of Violence against Women (Registro Único de Casos de Violencia contra las Mujeres or RUCVM).

Therefore, RUCVM is responsible for:

- Gathering information on cases of violence against women from statal institutions (national, provincial and municipal) and from different sectors (health, employment, security, justice and areas of women, among others);
- Centralizing and systematizing data available in administrative records created by different public institutions across the country;
- Developing indicators harmonized conceptually and methodologically so that they can be used as source material for the design and monitoring of public policies aimed at ending gender-based violence.

However, RUCVM does not provide information on *femicides*, which is collected and disseminated by the Supreme Court of Justice of the Nation.

According to a report published by RUCVM in March 2019, 576,360 women aged 14 and over suffered gender-based violence between 2013 and 2018 in

Argentina. Of those total cases, 326,917 (56.7%) women were identified by means of their identity card. As to the age of the victims, 66.6% of the cases were women aged between 18 and 39. Regarding the different types of violence, psychological violence is widespread (86.0%), followed by physical violence (56.3%), symbolic violence (20.1%), economic and patrimonial violence (16.8%) and sexual violence (7.5%). Furthermore, in 52.9% of the cases reported to INDEC, women state that they suffer more than one type of violence at the same time. In relation to the type of register, women aged 14 onwards sought counselling and assistance (42.6%), made police reports (27.4%) or judicial complaints (21.8%), and, in a smaller proportion, made emergency calls (4.7%), and received medical assistance (1.9%). As regards the relationship with the perpetrator, violence is committed by partners or former partners (43.0% and 39.1% respectively).

#### **6. Some commentaries and a conclusion.**

The issues of gender violence have recently begun to be addressed and are on the agenda, this is how it is marked that from some places such as the vice presidency of the Supreme Court, led by Dr. H. de Nolasco, training courses on this topic began to be given, not only in government agencies at the national level, but also from provincial agencies, who have become aware and seek all the tools to train their personnel.

Act No. 27.499, which is known as Micaela Act, is currently one of the laws that stipulate mandatory training. This act was passed after the femicide of Micaela García, who gives the law its name, an interesting fact is that whoever was one of the defendants in his homicide and later declared eligible, today is receiving the benefit of a sentence reduction to less than 3 years after the sanction of this law.

It has been observed throughout this research that violence against women in any of its forms has not decreased over the years, but has mutated.

Although different bodies have been created, such as the enactment of different laws, both at the international and national levels, to provide women protection, assistance and support, they have fallen short of expectations for being ambitious, and it is evident that there is a long way to go. This is due to the fact that it is still a taboo subject in society for women to recognize that they are victims of violence, this being less reported in middle and upper-middle classes, where economic and psychological violence is generally prevalent. While in more strata physics is more present, although they are not exclusive to one or the other, although they mostly take these aforementioned forms, due to a series of factors including: economic, cultural, social, etc.

Looking at the statistics that have been analyzed, the figures that are handled are really striking not only because of victims' ages, but also because of the work that has been done by state agencies.

It is also worth mentioning that although Argentina is one of the countries that has so far worked hard to combat violence against women through the enactment of laws and creation of specialized agencies, which mandate training to all state personnel, and other members of society, including staff members in companies or schools, cases of violence and discrimination continue to increase at an alarming rate.

Not only violence against women can occur in the family context, but also in the workplace, such as the famous phenomena glass ceiling and mobbing, both of which can affect women just because of their female condition, and not for their lack of ability or skills.





## CHAPTER NINE: WOMEN AND THE RIGHTS OF NATIVE COMMUNITIES <sup>109</sup>

### 1. Introduction.

In this chapter, we will analyze topics such as “Women and the Rights of Native communities”, the international day of rural women in Argentina, the need to get Empowerment for Women in the XXI Century, and the case of Rosario Quispe as the emblematic aboriginal.

Women’s rights happen to be human rights, too. They cover all aspects of life: health, education, political participation, economic well-being, not being subjected to violence, as well as many more. Women have the right to the full and equal enjoyment of all their human rights and to be free from all forms of discrimination: this is the essential for the achievement of human rights, peace and security and development sustainable.

The Beijing Declaration and Platform for action confirms that the protection and promotion of human rights is the primary responsibility of governments and is at the center of the work of the United Nations. The Platform for the action supports the achievement for the gender equality in the human rights framework and makes an explicit declaration on the responsibility of states to fulfill the commitments assumed.

The letter of the United Nations guarantees equal rights for women and men. All major International Human Rights instruments stipulate that discrimination on the basis of sex must end. Almost all countries have ratified the “Convention on the elimination of all forms of Discrimination against Women” (CEDAW). This convention was the culmination about more than thirty- year work

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<sup>109</sup> By Lucrecia Robles

by the United Nations Commission on the status of women. However, today there are still significant gaps and violations of rights in all regions of world.

On the other hand, progress has developed too slowly, especially for the most marginalized women. In many countries there is still discrimination in the law. Women do not participate in politics under the same conditions as men. They face discrimination in labor markets and in access to economic goods. The many forms of violence explicitly directed against woman deny them their rights and often endanger their lives. In some regions there are still too high levels of maternal mortality. The unpaid care workloads borne by women continue to limit the enjoyment of their rights.

## **2. Women and the Rights of Native Communities**

Women`s rights have formally codified as human rights in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The Declaration does not establish any new rights, but rather it creates an instrument that recognizes and takes account of the specificities of indigenous people`s human rights (including collective human rights), thus creating a more effective framework for exercising and implementing those rights. In the same way as the global women`s movement had argued earlier, the work leading to the Declaration was driven by the recognition that conventional or universal approaches to the human rights had failed to adequately protect indigenous people.

## **3. International Day of Rural Women in Argentina**

October 15 marks the International Day of Rural Women, as ordered by UN General Assembly in December 2007. I 2018 the slogan was “Sustainable infrastructure, services and social protection for gender equality and the

empowerment of rural women and girls”. Through this day, it seeks to recognize the transcendent play in rural area.

According to UN data, “rural women represent more than a third of the world`s population and 43 percent of the agricultural labor force”, although they suffer disproportionately from the multiple aspects of poverty and despite being as productive and good managers as their male counterparts, they do not have the same access to land, credit, agricultural materials markets or chains of high value cultivated. They also do not enjoy equitable to public services, such as education and health care, or to infrastructure such as water and sanitation”.

In the Argentine Agrarian Federation, in 2014 an extraordinary congress was held for the reform of the entity`s statutes, which approved the creation of the Secretariat for gender equality and opportunities and human rights. In this area it was established that it will always be in charge of a woman, in response to the request of Argentine Federate Women (MFA), who asked to participate in decision – making, increase their visibility in different events and train women through training sessions, thus ensuring equal rights and participation in the Union Action Committee.

Currently, this position is held by Mrs. Marta Accardi, who is also the national coordinator of MFA. “As Federated Women we always express the need for our participation at the decision table, backed by the commitment, availability and responsibility that it means. As of the creation of the secretariat, in 2014, the activity that the national MFA coordinator had been carrying out was prioritized in terms of meeting the needs of each district, with the collaboration of the regional coordinators,” said Aicardi.

#### **4. Empowerment of Women in the XXI Century**

The fights for human rights, in general was a continuous active work of certain groups of people, who organized, achieved rights that are not promoted

by governments. These rights were many times in the past violated, mainly due to cultural conditions and beliefs.

Nowadays women participate in the productive force, as well as in decision- making spaces in all areas, taking gender equity for granted and women have a very important role.

The 21<sup>st</sup> century was declared by the UN as the century of women and although in some countries it is a reality, in others women still face an environment of equality in terms of work, health, employment, home and rights, to mention only some aspects. The importance of women in these time goes beyond their incorporation into the labor market and the recognition of their rights and capacities.

At the International level, in economic and financial matters, women play a deceive role. Organizations such as the FED, the FMI or CEPAL are under the presidency of women, while in Germany, the United Kingdom, Chile or Norway, the position of prime minister are held by women. These are just a few examples at the global level, but it is required that in the 21stcentury gender equality is manifested as a constant and that inequalities are a thing of the past. Although there are important advances in Mexico, efforts must be redoubled to meet the UN sustainable development goals, which place gender equality and the empowerment of women at the center of the 2030 Agenda.

To achieve these goals, actions must be taken to eliminate poverty and promote inclusive and sustainable growth. The reduction of inequalities within the country is one of the first steps to take, especially of the population and end the differences that in terms of wages, in order to improve the income of the population and end the differences that still exist at work.

The role of the women in labor matters is important, since they allocate most of their income to the welfare of their children and their family. Its contribution to the household development is therefore highly significant.

The empowerment of women is another very important aspect. It is proven that they are more responsible in managing credit and that the financial support they can receive has a much greater multiplier effect on the well-being of their respective communities.

The presence of women will be essential to determine the level of development in the coming years in the economy of knowledge and innovation.

The trend of equity and non-discrimination is already underway, but it is important to speed up the process and that more and more areas join in this dynamic.

The normality in the 21<sup>st</sup> century is for women to consolidate their participation in the productive force, as well as in decision-making spaces in all areas. Adding the resources that women contribute will generate better development, both nationally and internationally.

We will not be able to tear down the walls of intolerance and there will be no social progress if it is not supported by equality and the participation of women.

#### **4.1. Rosario Quispe, the Emblematic Aboriginal**

This fighting woman, Rosario Quispe, founded, years ago, the “Warmi Sayajsungu” Association. From there, she began a tireless fight in favor of her people, promoting a socio-economic model rooted in the Colla Identity.

In the vastness of the Argentina Puna, at 4000 meters above sea level, the life of the Rosario Quispe is the story of the aborigine communities that have suffered from extreme marginalization and poverty and still continue to be deprived of their rights.

In 1997 Quispe won the prize from the World Summit of Women based in Geneva, Switzerland. It received support from the Swiss Avina Foundation to organize a trust-based credit system. In addition, she was nominated for the Nobel Prize and was a lecture at Harvard University.

“Our fight for our lands, for our territory continues,” commented the founder of the association, which was made up of women from around Abra Pampa.

Concerning to the origins of the foundation, Quispe described a very difficult past that, precisely, motivated different types of activities such as training and courses that later led to the creation of his organization.

“We had such a bad time in La Puna, we didn’t even have enough to eat. I had seven children. All the women were the same”, she said.

Today the “Warmi Sayajsungo” Asociation concentrates a large part of its efforts on helping women who suffer from uterine cancer, a reality, that has cost the lives of significant number of women who inhabit the Puna.

“We couldn’t understand why such young women died. We trained a lot because it was not just a case,” she said while remarking that according to medical research carried out in the area, 30% of women of La Puna have precancerous lesions.

She also stressed that although the Ministry of Health helps in what it can, “in La Puna it is difficult to fight cancer if you do not go house to house. It is true that they have put mobile lorries in La Quiaca and Abra Pampa, but the people who live 170 km away they do not go down to the city center.

“It is said a lot about our rights, but from there until they are fulfilled...” She ironically said.

On the other hand, the emblematic woman made reference to the opening of the Warmi Huasi Yachana University Centre, in which 25 young people between 18 and 25 years old were able to start studying a university career without having to leave their communities. She pondered the possibility that this education represents for young people lacking resources.

Today, the organization has 3.600 associates in 79 different indigenous communities, which gives them formidable social, economic, and financial power.

Power among these ancestral inhabitants is such a highly regarded concept that it's exercised from the very bottom, at the grassroots. The women are simultaneously venerated and criticized, feared but also consulted.

## **5. Conclusion**

However the role of international human rights discourse and indigenous international advocacy in this process is important, as it can and already has, in the form of the UN Declaration, for example expand conceptions and understandings of the scope and contents of indigenous self - determination, not as non – interference and independent statehood as perceived by state-centric discourse, but as an internationally recognized an existing human right that belongs to all people, not only to nation-states. Historically, the exercise of self-determination has rarely taken place without negotiations and some kind an agreement with the state or states within these groups of people has resided. In today`s interconnected and interdependent world, it would be unrealistic to assume significant or sustainable achievements without some form of a dialogue or mediation. Also, considering how indigenous people have transformed from being historical victims of international law (including the concept of self-determination), indigenous people`s active participation in rights-based discourses not only seems appropriate, but necessary in realizing their very right to self-determination.

On the other hand, at the beginning of XXI century, indigenous communities, mainly women, have the tools to make use of their rights.

What will lead to the empowerment of indigenous women in this time? From our personal experience I could say that only education and the support of government policies, will bring her out of her stagnation can finally be free.



## CHAPTER TEN: CONVENTIONS THAT MUST BE SIGNED IN THE FUTURE. AN UTOPIAN VIEW ON WOMEN'S RIGHTS <sup>110</sup>

*"To deny people their human rights is to challenge their very humanity"*

*Nelson Mandela*

### 1. Introduction

There are many articles that show the importance of human rights around the world. Governors, actors and singers, people in general, tend to deliver their speeches towards human rights. However, is it true that everybody is working for equality as regards human rights? Are women and men treated fairly equal? Are human rights properly respected as universal and fundamental ones?

As Nelson Mandela pointed out, humanity is challenged when their rights are denied. The purpose of this chapter is to provide some definitions about human rights, as well as a brief explanation of the origins and types of human beings.

In fact, after having a clear idea of what human rights are and involve, the present chapter will focus on women's human rights. It has been seen throughout the pages of worldwide history that women's rights have not always been a priority. Many resolutions, conventions and agreements have been signed in order to work towards equality and non-discrimination.

The United Nations has been addressing women's human rights and has made substantial progress. In addition, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) has also contributed in the understanding of these human rights, that must be respected. However, there are enough facts that show the unequal reality between men's and women's rights.

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<sup>110</sup> By Vargas, Cecilia Soledad – October 2020

Along this chapter, these rights will be analyzed. Some conventions and legislations will be shortly explained. Finally, the utopian view on women's rights in the future will be presented in order to open a door to new conventions and agreements that can change women's day-to-day life towards a world where equality becomes a priority and a reality.

## **2.Human Rights**

According to the United Nations, *“human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. They include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.”*<sup>111</sup>

These rights are not provided or granted by any state or government. They go from the fundamental ones, such as the right to life, to those that allow people enjoy worth living conditions, such as the right to clean water, healthy food and good education.

They are inherited by every single human being. For that reason, nobody can be mistreated by their nationality, ethnicity, gender, social class, race, belief, or any other personal characteristic.

### **2.1 Human Rights: Origins and Types**

As it has been pointed out before, the first concept that seems to appear is the one related to natural law, that is to say, the one that established that every human being has rights that cannot be granted by anyone else. Later, a new

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<sup>111</sup> United Nations. Peace, dignity and equality on a healthy planet. En <https://www.un.org/en/sections/issues-depth/human-rights/> Consultada el 21 de septiembre de 2020

concept appeared, so the natural law evolved into natural rights. This change was not unintentional because people needed to protect their rights and claims against the ones who deny or violate them. It offered a new way of facing different situations and thinking about people, governments and their relationships. In fact, when some countries declared their independence, they stated in their declarations of independence that all people were created equal. That was the beginning of the long process and work towards the respect of human rights.

When we talk about human rights, we are making reference to those inalienable rights that every single person has, which are equal by all people and must be protected and respected wherever and whenever they are, without discrimination of any type.

There are different types of human rights that have been determined throughout history. In this opportunity, a brief explanation about the political, civil, economic, social, and community developmental rights will be delivered.

The political and civil ones are related to physical and civil security, liberty and empowerment. The aim of writing norms about these rights is to protect people from tortures, arbitrary arrest, slavery and inhuman treatment, as well as, to guarantee freedom to choose a religion, express their thoughts, participate in assemblies, political meetings, among others.

The economic and social ones imply the rights related to the access to essential goods and necessities such as health, education, food, work, shelter, proper living standard, fair wages, and so many other aspects.

The community developmental ones refer to the special rights and self-determination of each community and minorities. For example, the right to the economic, social or cultural development, the right to promote their culture, belief and language.

## **2.2 The Universal Declaration of Human Rights and its Impact**

This statement is the legal framework to protect human rights. It articulates not only rights but also freedoms for all human beings. It was adopted by the United Nations General Assembly on 10<sup>th</sup> December 1948. This declaration involved the agreement of many countries on a collaborative and comprehensive statement of human rights. It deals with issues related to people's ideology, religion, needs, interests, capacities, political and cultural interests, among other topics.

The Universal Declaration of Human Rights is divided into five distinctive sections that are clearly identified: the preamble, definition of human rights, civil and political rights, socio-economic and cultural rights and its conclusion.

However, as this declaration is not a treaty, it does not necessarily imply legal obligations for any country. Nevertheless, it has been of great influence on several international human rights laws.

This declaration has encouraged international agreements such as the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, which are legally binding on some countries.

Fortunately, along these years there were many other binding agreements to go on working for the human rights that are established on the Universal Declaration. For instance, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

There are several advantages to be considered as regards the Universal Declaration of Human Rights, such as the promotion of international peace, security and stability, the aim to avoid discrimination and encourage equality and the opportunity to have a framework for human rights law development. Though,

there are some disadvantages, such as the implementation of it in each country, the real conditions in which people live, the lack of power to be a legal document and the people's culture or beliefs that are against some articles of the Universal Declaration.

### **3. Women's Rights**

Human rights are supposed to be equal for all human beings. But women had suffered a lot throughout history. They had to gather strength and raise their voice in order to be listened and respected. They had to fight for women's right to vote, for a place in political parties, for equal access to education and work, for fair wages and living standard conditions, and for every single achievement that up to now has succeeded. This evolution took place due to the fact that waves of feminism focus on women's legal rights. They organized movements and strikes for equal payment, employment, education, freedom of expression and health care for them and their children. They joined with governors and union representatives to go on working for women's rights.

In some countries, women gained access to jobs; divorce laws were liberalized; pregnant women were protected from their employers to avoid firing them; educational programs were offered to women and men; and female sport teams were sponsored.

It has not been an easy and fair path towards equality and there is still a long way to continue fighting for women's rights and opportunities that should have been respected from the beginning of our history.

#### **3.1 Key Documents and their Contribution**

The Universal Declaration of Human Rights was one of the statements that established the equal treatment and rights for women and men. In addition, the

International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), including the International Bill of Human Rights, legally supported that Declaration, provided authoritative interpretations, and prohibited discrimination at any point.

The ICCPR *“guarantees, among other rights, the right to life, freedom from torture, freedom from slavery, the right to liberty and security of the person, rights relating to due process in criminal and legal proceedings, equality before the law, freedom of movement, freedom of thought, conscience and religion, freedom of association, rights relating to family life and children, rights relating to citizenship and political participation, and minority groups’ rights to their culture, religion and language.”*<sup>112</sup>

The ICESCR *“guarantees, for instance, the right to work, the right to form trade unions, rights relating to marriage, maternity and child protection, the right to an adequate standard of living, the right to health, the right to education, and rights relating to culture and science.”*<sup>113</sup>

Later on, in 1979 the General Assembly of the United Nations adopted the Convention on the Elimination of All Forms of Discrimination against Women. It established that any discrimination against female people will be considered an offence to their dignity. For that reason, the states were asked to abolish all law, regulations, practices and customs that promote discrimination against women. Moreover, the states were asked to incorporate the protection to equal rights for women and men. This convention has sixteen articles where the main purpose is to avoid discrimination against women in the different fields such as political, cultural, religious, economic, civil and social ones.

The protection to women who live in rural areas and the ones who has suffered from trafficking and other specific situations, such as marriage and family,

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<sup>112</sup> Y <sup>113</sup> United Nations Human Rights Office of the High Commissioner (2014) Women’s Rights are Human Rights. New York and Geneva.

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are written in the CEDAW Convention due to the fact that are considered a risk to their human rights.

There are many other conventions that prohibit the discrimination based on sex, such as the Convention on the Rights of the Child and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

In addition, there are some conventions that admit that discrimination against women exists and requires to address it by eliminating it and promoting women's empowerment, such as the Convention on the Rights of Persons with Disabilities, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

It is very important to express that the World Conference on the International Women has started in 1975 and since then, many steps have been achieved as regards women's rights belonging to diverse groups, such as older women, ethnic minorities or women with disabilities. Some of the international policy documents that were achieved are the International Plans of Action on Ageing, the World Programme of Action concerning Disabled Persons, the Durban Declaration and Programme of Action.

The Vienna Declaration and Programme of Action established that women's and girls' rights are universal and indivisible human rights. It also stated that any form of gender discrimination and harmful traditions or customs should be eliminated.

The Millennium Development Goals were established by the United Nations in 2000 and were supposed to be achieved by 2015. Among the different goals, there was one related to gender equality and women's empowerment, but any of the goals emphasized a lot on the elimination of discrimination and violence against women.

Sustainable Development Goals and the 2030 Agenda was a new attempt of the United Nations to renew the political commitment and involvement of the different countries on the sustainable development. Once again, the countries reaffirmed their desire to work for women's rights and delivered a written document to empower women.

However, women are still not being treated equally in different parts of the world. They are suffering abuse, trafficking, harmful customs, violence and discrimination.

Their voices are most of the time silenced and the conventions, agreements, conferences and declarations seem not to be enough to stop it.

### **3.2 The Utopian View of Women's Right**

There is a long way to go. Women's rights are humanity rights, so people must keep on fighting for equality. Education must be accessible for women and men without distinction. Governments must invest money on education, where kids, teenagers and adults spend a great period of time learning and interacting among them. Education is the key point to start changing this cruel reality. When students enter a school, they need to learn to respect each other and schools must promote human values in every single activity and project. It is not enough to have a written document where everybody can read or even study or memorize the human rights or the Sustainable Development Goals by heart. It is necessary to teach and learn by doing. There is a huge difference between learning by listening and learning by being involved. If children only listen to what it is supposed to be right but cannot put into practice those attitudes, they do not learn significantly.

Although schools are not the only place where students learn, they are students' second house, and most of the time, students love learning with others and listening to their teachers, who are regarded as role models. It is time to

change school programs and methods. Kids, teenagers, adolescents, and adults do not need to be considered a number, they need to be considered human beings with their own ideas, thoughts and voices. Schools need to guide them and promote human values and rights by creating the right atmosphere where equality, culture of peace and non-violence must be the fundamental and transversal topic to be practiced by students and teachers.

Moreover, there are many conventions that must be signed, but they will be successful if women are involved in deciding what conventions must be written. Their voices need to be listened to and it is essential to give them the place to be heard. Men must understand that though they are signing diverse conventions and agreements, women are not signing and writing those documents. Women must be part of governmental decisions. They should have the same representation in every local, national and international conference, forum and assembly.

#### **4. Conclusion**

*"When there are no ceilings, the sky's the limit."*

*Hillary Clinton*

If nations start realizing the importance of changing aspects that nowadays are considered normal, such as the idea of organizing school programs and offering social activities, political positions to women and men without discriminating against people because of their gender, a step towards equality would be taken. People deserve to live in a peaceful world where every human being is respected and valued by their virtues and capacities.

They must keep in mind that mothers, fathers, daughters, sons, brothers, sisters, step-mothers, step-fathers, mother-in-law, father-in-law or grandparents are human beings that must have the possibility to be the main characters of their

own life-stories. They are the only ones that must write the pages of their books of life. Nobody is better than others, even if they have more money, titles, or anything that nowadays is thought to make the difference. No one deserves to suffer the misery of feeling less than other persons and this is the responsibility of all people, community, government and nation.

It is time to make the utopian view of women a priority and a reality, there is no time to wait for others to act and take actions, humanity has to raise the different voices and work together towards equality, respect, peace and harmony.



## **CHAPTER ELEVEN: PUBLIC POLITICS TAKEN BY ARGENTINIAN STATE WITHIN TEMPORARY SPECIAL MEASURES PROVIDED BY ARTICLE FOUR OF THE CEDAW.<sup>114</sup>**

### **1. Introduction:**

In this work I will analyse the measures to end discrimination against women in all forms, adopted by Argentina's government. More precisely, I will examine Argentinian legislation and some judiciary precedents related to gender equality.

In order to be clear, first I have to mention that the CEDAW (Convention on the Elimination of All Forms of Discrimination against Women), was adopted in December, 1979, by Resolution 34/180 by the UN General Assembly. Argentina approved it by the act 23.179 (June of 1985). Since 1994 it has constitutional hierarchy (article. 75, inc. 22, CN).

The CEDAW takes as starting point the historical and structural discrimination against women, and recognises and protects their rights. Same target inspires the American Convention to prevent, sanction and eradicate violence against women, which is known as Convention Belem do Pará, approved by act 24.632.

In the year 2006, through act 26.171, Argentina approved the CEDAW Optional Protocol, adopted by UN General Assembly in October 1999. This protocol includes aspects related to the enforceability, but it doesn't have new rights. Our country recognises the competence of the Committee for receiving and considerate denounces to any violation against any right consecrated in the CEDAW.

According to CEDAW, the discrimination can be in a direct form, where the discrimination is explicit, or indirect, in this case, it is the result of a more complex

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<sup>114</sup> Chacón, Laura Melina – Octubre 2020

process. When an act seems to be neutral, it respects the sex of their receivers, but in fact it has the effect of reproducing inequalities related to sex and gender.

The basis of the Convention assumes that the world is androcentric, and that the view focused on the white, adult, heterosexual man, generates inequalities in relation to power between men and women. That's why the most important mechanism of the CEDAW is to eliminate prejudices and stereotypes, which are the basis of that sexist and patriarchal matrix.

## **2. Backgrounds:**

Therefore, now we have to analyse the importance of the temporary special measures, as useful mechanisms in order to achieve equality between men and women. The article 4 determines: "1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved. 2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory."<sup>115</sup>

Related to these special measures, there is a landmark case called "Campo Algodonero"<sup>116</sup>, where judges ruled that it is not enough that States do not violate rights, but it is necessary the adoption of measures consecrated in article 4.

But it is not enough. It is necessary to understand that we must modify social and cultural patterns of conducts and practices based in the idea of women's inferiority and let them occupy public spaces, because historically

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<sup>115</sup> CEDAW Full text: <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

<sup>116</sup> <http://escuela.asesoria.gba.gov.ar/documentos/106/Campo%20algodonero.pdf>

women have been confined to private spaces, letting the public place only for men.

For instance, in Argentina, until 1968 women were considered not capable “di facto”, we were assimilated to children (till de derogation of art. 54, inc. 5° of the Civil Code of Vélez Sarsfield)

During the last century, women were excluded from the exercise of her citizenship. In Latin America, the recognition as citizens is produced mid-20th century, since the enact of legislation related to women’s suffrage (act approved by a Congress full of men). Whereas, participation in elections did not facilitate the access to representative bodies, and the incorporation to institutions was really low until the end of the century.

After the nineties, after the promotion of quotes system in the lists of elections, we start to see woman in elected positions.

### **3. The importance of the act 24.012:**

Argentina was the first country in the world to incorporate the quotes systems, through the sanction of the Act 24.012, called “Ley de Cupo”, in the year 1.991<sup>117</sup>. This act stablishes a minimum base of thirty per cent (30 %) of woman candidates in list of parties for elective positions. This act was applied in elections of the year 1993, and reaches his target ten years after that.

According to the digital newspaper “Telam”, published on March, 07th of the 2020<sup>118</sup>, women represented forty-one per cent on Chamber of Deputies. Thar article said that it was really difficult for women to reach the fifty per cent, because there is more presence of men at the top of the lists of candidates, registered in the last elections.

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<sup>117</sup> Full text of Act 24.012: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/411/norma.htm>

<sup>118</sup> <https://www.telam.com.ar/notas/202003/438537-diputados-mujeres--representan-el-41-por-ciento-de-la-camara.html>

The lower Chamber counts with 107 women legislators; this is the highest number in Argentinian history. The chamber has 257 members; therefore, it shows almost forty-one per cent of women participation.

Likewise, the Act 27.412 (Gender equality in elected positions) from the year 2017<sup>119</sup>, was applied in the last election in 2019. The target is to get the nine points of difference in order to have a chamber divided by equal parts in gender matters. This act determines that the list of candidates for Congress (Deputies and Senators Chambers) and for Parliament of Mercosur should be realized putting interspersed to women and men since the first candidate until the last substitute candidate.

The goal of this act is to guarantee gender equity in legislative organisms. This is one of the feminist movement's claims.

The article number six establishes as requirement for the existence of political parties that they should respect gender equality in the conformation of lists of candidates for the renovation of their authorities. This guarantee new places for woman.

In elections of October, there were fifty-one lists from twenty-four districts, and just ten of them were headed by women and the rest of them, forty-one, had a man as the first candidate. So, Argentina is between the countries with the highest rates of parliamentary representation in the world. But, is this enough? I think it is necessary a change in the structures of power. We cannot deny that in our society, most of the responsibilities related to family and domestic life are in charge of woman, in the majority of cases. So, women work in their homes, and outside of their houses, which means double work, this is because there is no just distribution of the housework. So, for woman is much harder to do public activities with those that occur in the private ones.

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<sup>119</sup> Full text of Act 27.412: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/300000-304999/304794/norma.htm>

We can say that if there is a major level of responsibilities in their families, women have fewer probabilities to get a legislative career than men. Here is where the problem of the family structure appears. Often, women in these types of charges, are single or with no children. So, if there is no a fair distribution from domestic work, it will be more difficult for women to access to those positions. It is necessary to count with public politics of care, domestic responsibilities, which are assigned by society to women. So, a major number of women do not guarantee –necessarily- a major equality in institutions<sup>120</sup>.

We often see that higher positions in enterprises are occupied by men, even when women count with so many labours experience and education. This is called “glass ceiling” because it shows the barriers that do not allowed woman to get powerful positions.

The same situation happens in Congress: often, woman legislators are more qualified than men. This is useful to bring down the argument that justify difficulties for women to access hierarchy positions, saying it is because there is lower level in their education.

Currently, the presidency of the Senate Chamber is been occupied by a woman, Dra. Cristina Fernandez de Kirchner, which is an achievement. Before, no woman has been in that place.<sup>121</sup>

#### **4. Analysis of Argentinian Legislation related to gender equity:**

A major number of women in these legislative positions means an advance in terms of democratic representation and with their participation, women could represent women interests. This means a development of an agenda that started to include subjects related to family right, women rights, and related to other minorities, incorporating new sights over certain concerns that were related to the

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<sup>120</sup> Taken from website: <https://tefenoticias.telefe.com/actualidad/todo-el-mundo-habla-de-victoria-donda-amamantando-en-el-congreso-y-la-toman-como-ejemplo/>

<sup>121</sup> Taken from the website: <https://www.argentina.gob.ar/sites/default/files/ope-doc1-paridad.pdf>

experience of being woman. These matters were ignored by men legislators. The presence of woman stimulates the sanction of acts, the production of public politics that are related to an extension of women's rights in different aspects of social life.

And here we have to take as examples: Act 25.673<sup>122</sup>, which is about the creation of National Programme of Sexual Health. The purposes of the programme are to reach the highest level of sexual health and responsible procreation, reduce the maternal and childhood morbidity and mortality, promote the female participation in the taking of decisions related to sexual health, to prevent no desired pregnancy's, prevent sexually transmitted diseases, HIV, to guarantee the access to the information, methods, orientation related to sexual health and responsible procreation.

If we consider Act 25.674<sup>123</sup>, it determines the participation of woman in the units of Collective bargaining of labour conditions and the incorporation of women in elective charges of trade or labour unions. Each unit for collective bargaining of labour conditions, should have a participation in proportion of woman delegates of the activity.

### III) Act 26.061<sup>124</sup>

The goal of this act is to protect integrally the rights of girls, boys, adolescents who are in the territory of Argentina, to guarantee the exercise and enjoyment of the rights recognised in the national law ant international treaties where Argentina is part. Also, determines the importance of the principle of the child's best interests; that the Convention of the Rights of the Child is mandatory in every administrative o judiciary act or decision, related to every person under

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<sup>122</sup> Full text of Act 25.673. <http://servicios.infoleg.gob.ar/infolegInternet/anexos/75000-79999/79831/texact.htm>

<sup>123</sup> Full text of Act 25.674: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/80000-84999/80046/norma.htm>

<sup>124</sup> Full text of act 26.061: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/110000-114999/110778/texact.htm>

the age of 18: recognises the following rights for children and adolescents: to life, dignity, identity, health, education, freedom, sport, recreational games, to give their opinion, to be heard, among others.

IV) Act 26.130<sup>125</sup>

This act about surgical contraception guarantees the right to every person capable and over eighteen years old, the access to the practice of tubal ligation and vasectomy. It determines that is no necessary the consent of the spouse or cohabiting person, except when is person with a disability, in this case is necessary judicial authorization. These interventions must be done for free for the requesting person in the institution of public health system and the prepaid medical entities and organization of social security have the obligation to incorporate these medical interventions to the health coverage, in order to be free for the beneficiary.

V) Act 26.171<sup>126</sup>

This act refers to the approval of the Optional Protocol to the Convention on the

Elimination of All Forms of Discrimination against Women, recognizing the competence of the Committee to receive and consider communications under the protocol, and stipulates a communication procedure.

VI) Act 26.485<sup>127</sup>

This act promotes and guarantee the elimination of the discrimination between women and men, stresses the right of women to live a life free from violence, the conditions to prevent, sanction of the discrimination and the violence

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<sup>125</sup> Full text of Act 26.130: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/115000-119999/119260/norma.htm>

<sup>126</sup> Full text of Act 26.171: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/120000-124999/122926/norma.htm>

<sup>127</sup> Full text of Act 26.485: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/150000-154999/152155/norma.htm>

against women; the development of public politics related to this matter, the removal of sociocultural patterns that sustain the gender inequality and relations of power over women, the access to justice for women who suffer violence, the assistance for those women.

As well, give us a definition of violence against women, affirming that is every conduct, by action or omission, that in a direct way or not, in public or private space, that is based in a unequal relation of power, affects their life, freedom, dignity, physical integrity, physiological, sexual, economic, or patrimonial and their personal security. It comprises those that are realized from the State or by their agents.

Establishes types of violence against woman, and distinguish between fiscal, psychological, Sexual, economical and symbolic violence. Also determines

modalities of the expression of that violence and makes a difference between domestic, institutional, labour, against reproductive freedom, obstetric and mediatic violence.

This act develops a political programme for equality and non-discrimination, and creates an organism towards to monitor, gather, produce, register and systematize information about violence against women.

#### VII) Act 26.791<sup>128</sup>

This act incorporates the figure of femicide to the Criminal Code, in the year 2.012, modifying the article 80 of Criminal Code.

Femicide is the intentional killing of women because their condition of being women, the author of the crime is a man, and it can occur in public space o private

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<sup>128</sup> Full text of act 26.791: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/205000-209999/206018/norma.htm>

space, and with independence of a previous relation between the aggressor and the victim. To configure this crime, is necessary to have the intention.

There is a landmark case in this topic, where judges use this term “femicide” for first time, before the enact of the act object of analysis. In the case Javier Weber, was condemned to 21 years of prison because he tried to kill his ex-wife, Corina Fernandez (tentative of femicide), he shot her three times with a gun. By Miracle, Fernandez is alive. In the basis of the ruling, judges said that the dead of a woman as a consequence of gender violence; it’s a category that has specificity in law since the Convention of Belem do Para. They determined that the conduct of Javier was a tentative of femicide; that his action was directed to provoke the dead of Corina Fernandez, and that the reason was her condition of woman. They declared that his conduct was planned and the motivation was the break up that destroyed the domain over his ex-wife and his daughters. They remarked that the crime is serious because the motivation of the author is serious, who hate the condition of the woman that doesn’t agree to do what he wants, so she doesn’t deserve to continue existing. They affirmed that the tentative of femicide is the final of a process of violence that lasts in time<sup>129</sup>.

#### VIII) Act 26.994 (Civil and Commercial Code)<sup>130</sup>

This code abolished the Velez Sarsfield’s Civil Code that was in force from the year 1.871 until the year 2.015. The Civil and Commercial Code improved the old legislation and one of those improvements is that it has gender perspective.

For instance, the article 64 determines that the son or daughter of matrimony will have the surname of any of the spouses –before he or she had to have the surname of the male progenitor-, if there is not an agreement about that, it will be determined by raffle realized in the Register of civil status and capacity

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<sup>129</sup> <https://www.cij.gov.ar/nota-9686-Difunden-fallo-que-condeno-a-20-anos-de-prision-a-un-hombre-por-tentativa-de-homicidio-de-su-exmujer.html>

<sup>130</sup> Full text Act 26.994: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/235000-239999/235975/norma.htm>

of persons. The article 67 establishes that any of the spouses can use the surname of the other spouse, with the preposition “of” or without that preposition –years ago women had to have the surname of their spouse.

Furthermore, the article 441 regulates the figure of economic compensation in case of divorce, introducing the possibility to claim a compensation by the spouse to whom the divorce produces an imbalance of his or her situation, and where the cause is the marriage and its break up. That compensation can consist in a unique sum of money or in a rent for a determined or indefinite time. The importance of this article is that pretends to remove gender differences, because we can’t deny that historically women have dedicated to housework, and the care of the children, leaving in many cases, their careers, and professional projects.

A prestigious Argentinian lawyer, Dra. María Victoria Famá explains that in most families, women still assume the charge of domestic work and care of children, still when they realize an external activity. This division can work when there is a common project, but when the spouses get divorced, this project is frustrated and that balance is broken. The spouse that did the housework has a double charge. Here is the importance of this figure, it tries to balance this unequal situation, in order to collocate the spouse in disadvantage by the break up in a potential situation of equal labour and economic opportunities that she (or he, but in most cases is a “she”) had have if there wasn’t a marriage<sup>131</sup>.

The article 660 prescribes that daily homework that does the progenitor that has assumed the personal care of the children has an economic value and is an input to their maintenance. Again, in most cases and historically, this task is assumed by the mother. This article is really important because there has been a negative valuation to the effort that implies the care of the children, who does this

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<sup>131</sup> [http://www.saij.gob.ar/juzgado-nacional-primera-instancia-civil-nro-92-nacional-ciudad-autonoma-buenos-aires---fijacion-compensacion-arts-524-525-cccn-fa18020000-2018-03-06/123456789-000-0208-1ots-eupmocsollaf?utm\\_source=newsletter-mensual&utm\\_medium=email&utm\\_term=mensual&utm\\_campaign=jurisprudencia-nacional](http://www.saij.gob.ar/juzgado-nacional-primera-instancia-civil-nro-92-nacional-ciudad-autonoma-buenos-aires---fijacion-compensacion-arts-524-525-cccn-fa18020000-2018-03-06/123456789-000-0208-1ots-eupmocsollaf?utm_source=newsletter-mensual&utm_medium=email&utm_term=mensual&utm_campaign=jurisprudencia-nacional)

work is the person that takes the children to school, who daily homework, who cares them when they are sick. As consequence of that, that person has less time to do other type of rentable activity. And who does this work for many years, has less possibilities to enter to the labour market. This value is in many cases unknown by the father. So, the inclusion of this article is really a conquest.

#### IX) Act 27.452<sup>132</sup>

This act establishes an economic repair or compensation for children and adolescents, when his progenitor has been processed or condemned as author, co-author, instigator or accomplice of the crime of homicide of his/her progenitor, and also, when has passed away as consequence of gender violence. The purpose is to protect the sons and daughter from women who are victims of femicide, so they can grow in a healthy environment, and they can receive a sum of money –monthly- as compensation.

This act is called “Brisa Act”, because Brisa’s mother was killed by his father in the year 2.014. Her story was taken by a civil association to claim an act to obtain a economic repair for sons and daughters of victims of femicide, in cases where male progenitor are condemned, until they get age majority.

In December of 2014, Rodriguez (Brisa’s father) denounced that Daiana Barrionuevo (Brisa’s mother) has left home and that had abandoned her daughter and sons. Days after, two people found in a river Daiana’ s body in a bag. Her ex-husband has killed her by hitting her. He was condemned after that<sup>133</sup>.

The conditions to get the reparation are: that children or adolescents have less than 21 years old or being a person with incapacity. And they will be beneficiaries if: the femicide was committed by one of the progenitors and that he/she has to be processed or condemned as author, co-author, instigator or

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<sup>132</sup> Full text Act 27.452: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/310000-314999/312717/norma.htm>

<sup>133</sup> <https://www.perfil.com/noticias/policia/brisa-la-nena-que-inspiro-una-ley-para-victimas-de-femicidio.phtml>

compliance of the crime of femicide of the other progenitor; if the criminal action against the progenitor has been declared extinct by dead; if each of the progenitors has passed away as consequence of gender violence, determined by a judge.

X) Act 27.499<sup>134</sup>

This act regulates the mandatory training in gender and gender violence matters for all people who works as public official in Legislative, Executive or Judiciary power of the Nation.

This act is called “Micaela Act” in commemoration of Micaela García, a girl that was a victim of femicide. She was killed by Sebastian Wagner, a man who has criminal record of rape. He was found guilty of the crime of rape, twice before raping and killing Micaela García. A judge, Carlos Rossi, grant him freedom,

notwithstanding that the reports didn’t recommend that.

This act pretends to find mechanisms to identify gender inequalities and make strategies to eradicate them through the design of politicians with gender perspective, in all the country.

XI) Act 27.610<sup>135</sup>

This act allows interrupting voluntarily the pregnancy, within fourteen weeks of gestation. This act makes this procedure safer and free. The importance of this act is that determines the right of decision to continue or not the pregnancy for women and people with capacity to gestate.

XII) Act 27.611<sup>136</sup>

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<sup>134</sup> Full text Act 27.499: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/315000-319999/318666/norma.htm>

<sup>135</sup> Full text Act 27.610: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/345000-349999/346231/norma.htm>

<sup>136</sup> Full text of Act 27.611: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/345000-349999/346233/norma.htm>

The goal of this act is to look after the health and life of women and people with capacity to gestate and of children in early childhood. In order to comply with the commitments assumed by Argentinian State related to public health and human rights, the target is to reduce the mortality, malnutrition, integral attention to women, pregnant person and children until three years old, among others.

This act incorporates a subsidy for integral care that consists in the payment of a sum of money that people who are entitled will receive once in the year, for each boy or girl with less than three years and that if they can proof the compliance to the vaccination plan and the sanitary control.

Also, the act determines that the pregnant person will receive too a sum of money, since the begging of the pregnancy until the interruption or birth of the child, it hasn't to exceed nine monthly payments, and it can be solicited starting the week number twelve.

## **6. Conclusions:**

There are many other institutions. acts and judicial precedents that contribute to a change of paradigm, there are a lot of advances in the ambit of the law, justice, state agencies that fight to achieve equality between men and women, and that produces a fair society. But there is still much to do. There is still much violence. Daily we can see advertisements with symbolic violence, that confine woman to a common place, that seems to order us to be worried for physical appearance, but there is not such kind of commercials for men. Without going further, in an advertising of Radio Rivadavia, the Radio announces the schedule of the different programs, and it consists in an image with only men. Days ago, a girl was looking for a job, and the owner of a commercial place give her drugs and rape her, but the judge grants him freedom because he has no criminal record. Days ago, a physical trainer of Güemes (Santiago del Estero province) was trying to encourage to his team degrading women, reproducing old stereotypes.

And globally: who doesn't remember this image in the 2018 reunion of G20 group, where were all men?<sup>137</sup>

We have advanced a lot as society, that is demonstrated with the sanction of acts that we analyse before, the state's agencies created for help women in violence situations, the education in gender to public workers, but –again- there is still a lot to do. And the proof of that is what we see daily, in our homes, on television, social media, among others.

There will be a day that will not be necessary so many acts to “help” woman to achieve an equality treaty, because we will be treated not as inferior subjects, we will be treated for our capacity, and not because our physical appearance. But the fight continues. Because, as Aure Lodre said: “I am not free while any woman is unfree, even when her shackles are very different from my own.”



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<sup>137</sup> Taken from the website: <https://www.efeminista.com/g20-mujeres-empoderamiento/>

## **CHAPTER TWELVE: WOMEN'S EDUCATION AND INTERNATIONAL H.R. CONVENTION<sup>138</sup>**

Napoleon Bonaparte used to say: "Give me an educated mother, and I shall promise the birth of a civilized nation".

### **1. Introduction**

With this quotation, we may start to understand the importance of young women in every part of society.

Education is a long-lasting contribution to family and a boost to community progress.

Probably a mother with a low educational level will not be able to support their children during their training. Therefore, their school results will be really poor, leading to a spiral of poverty and unemployment. The elimination of illiteracy among women and the redefinition of their role in society cannot be separated from the eradication of poverty. A well-educated woman can be a powerful transforming agent and a key social actor. Facing gender-based discrimination must be a key point in a constructive agenda in every country. The appropriate public policies and adequate investment along with reviewing applicable laws and procedures in accordance with relevant international standards is the consistent effort that should be made to break the injustice of an unequal system that has been perpetuated for too long in time.

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<sup>138</sup> By Agüero, Carla Maria Amelia- October 2020

More than forty years went by since the celebration of The Convention on the Elimination of All Forms of Discrimination against Women. Nevertheless, gender inequality still remains in existence in all classrooms around the whole world. In spite of education being a human right, gender parity in education is an aim that seems unachievable, especially in developing countries.

Inequality is part of reality. It is vital to advocate - both at National and International levels- to abolish differences between women and men. Families, communities, society and governments must work together to transform this reality, minimize this unfair gender gap and accomplish the equal access to inclusive quality education.

Quality Education is a fundamental Human Right and a goal to achieve for every Nation. This global goal becomes more important when it comes to minority group as girls who suffer from exclusion during all their life. Despite education being recognized and guaranteed in almost all the most important Treaties, convention, recommendations and Constitutions of every country, sometimes seems a forgotten and disregarded right. In addition, gender inequality in education is still an issue. Every citizen has the right to a proper education regardless of gender but sometimes progressive frameworks are not enough and equal opportunities are beaten by marginalization, inequalities and discrimination.

The enjoyment of this primordial right allows the fully realization of other rights due to its multiplying effect, without an education a woman cannot become a right holder of a wider range of human rights

Currently, the Right to Education is a crucial part of the international Human right law which encompasses a complex system of international organizations and instruments.

## **2. What education means**

Education has been defined as the act or process of acquiring general knowledge, developing the powers of reasoning and judgment and generally of preparing oneself or others intellectually for mature life or "the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capabilities, attitudes, aptitudes and knowledge."

The European Court of Human Rights has provided two different definitions of education defining it in a narrow sense as "teaching or instructions... in particular to the transmission of knowledge and to intellectual development" and in a wider sense as "the whole process whereby, in any society, adults endeavor to transmit their beliefs, culture and other values to the young"

Sadly, education is not a fundamental human right for all the International Community. It is a basic and fundamental standard which as a consequence of its sociological expression and validity must be recognized in the legal system. Education is a basic right based on shared values like dignity, fairness, equality, respect and independence. Nevertheless, there are certain groups that have historically been marginalized and postponed by public policies. Education is commonly understood as an inalienable, fundamental right to which a person is inherently entitled simply because she or he is a human being and is inherent in all human beings, regardless of their age, ethnic origin, location, language, religion, ethnicity, or any other status. It is a right universally recognized, applicable everywhere and at every time, and it is generally considered that they should not be taken away in any circumstances.

### **3. International elaborations**

In a vast number of International Treaties, Education is recognized on the basis of human dignity and equality, key values that lie in the core of the idea of human rights. Provisions regarding Education are found in general and in specific Treaties on the matter. Right to education of women is also part of soft law (general comments, recommendations, declarations, and frameworks for action) as well. In addition, most of the signatory States of these International agreements have adapted their local law and amended their Constitution in accordance with all these binding multilateral treaties signed by them. Nowadays the right to education is guaranteed and protected in more than 140 national constitutions globally. When it comes to our country the Constitution enshrines the right to education in article 14 to realize the right to education on a national level. It refers to it in a brief manner, referring to the right to teach and learn.

Under International legislation right to Education presents distinct characteristics, in consequence States must provide Education under the principles mentioned below.

#### **Availability**

States shall provide educational institutions with adequate conditions, infrastructure and facilities thus it requires the government to guarantee a sufficient teaching staff, schools and to ensure that free and mandatory education is affordable for all boys and girls of school age.

Accessibility - The right to all children having equal access to school services comprises three fundamental aspects. First of all, respect for the principle of non-discrimination ensuring the inclusion of marginalized groups such as girls. Education should not be denied to any student, there should be universal access to it. Second material accessibility, otherwise transportation, should be provided to students, particularly those that might live in rural areas and ensure ways to school are safe and convenient. Lastly, economic accessibility, education should be affordable to all, with textbooks, supplies and uniforms provided to students at no additional costs.

Acceptability - Education provided should be free of discrimination, relevant and culturally appropriate for all students. Students should not be expected to conform to any specific religious or ideological views. Methods of teaching should be objective and unbiased and material available should reflect a wide array of ideas and beliefs. Health and safety should be emphasized within schools including the elimination of any form of corporal punishment. Professionalism of staff and teachers should be guaranteed.

Study programs and pedagogical methods must be acceptable. It implies quality guarantees for education, minimum health standards and safety controlled by the government.

According with International legislation, education is attributed four fundamental purposes: to achieve the full development of personality and human dignity; promote respect for fundamental rights and freedoms; encourage participation in a society; promote understanding, tolerance and relationship among all nations, religious or racial groups and the maintenance of peace.

Adaptability

The needs of community need to be taken into account to make adjustment educational programs.

To Remain in the educational system with equal opportunities constitutes a derivation of the principle of gratuity and equity provided for every Human Rights Instrument In most of them, it is stated that education must be oriented towards respecting the rights and freedoms set forth in the instruments, the promotion of democratic values, justice, peace, development of personal autonomy, human personality and the sense of its dignity.

On 10 December 1948, at the Palais de Chaillo, Right to Education was enshrined to all human beings by 58 members of the United Nations. Despite not being binding, The Universal Declaration of Human Rights forms part of the so-called soft law and has attained the status of rule of Customary International law. It has also become a milestone document and a common standard of achievement for all the state members of the Convention and for the rest of the world.

In this declaration, education was recognized for the first as a human right in an official text with a global reach. It provides that “everyone has the right to education” and commits all nations to recognize education not as a privilege but as a human right with an emphasis on being inclusive.

The right to education is stated in the section concerning individual's economic, social and cultural rights. Specifically, it is reflected in Article 26 of the convention, which remarks the right not to be discriminated in the enjoyment of educational rights. It could be seen as the first approach to eradicate gender-based discrimination.

Article 26 adopted by the United Nations General Assembly in Resolution 217 A on December 10, 1948, States:

"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 26 of the Universal Declaration of Human Rights (UDHR) makes primary education compulsory and free. Within it, education is also mentioned as a mean to achieve realization of the right to "full development of the human personality and in empowering individuals.

It was also the first time that the organized community of nations made a declaration and an explicit recognition of equality. It states that men and women are entitled to the right to education without any discrimination "born free and equal in dignity and rights" regardless of "nationality, place of residence, gender, national or ethnic origin, color, religion, language, or any other status" It directly inspired the development of international human rights law.

The aim of this Convention is to empower all people to participate effectively in a free society and promote understanding among all ethnic groups, between nations, racial and religious groups

In some respects, we can argue that Education is a right achieved widely. In some regions, school attendance rate is rising when it comes to girls and even parity with boys has been achieved. What is more in accordance with the aims laid out in Article 26, many countries aspire to make secondary education free and universal for all.

This convention and most of the International Instrument have omitted to mention the right to pre-primary education. Free quality pre-primary school education can have a good impact in girl's early childhood and in their adaptation during the learning process. What is more, it could allow their mothers to enter the workforce more promptly. The right to education was further enshrined in Various Conventions such as the International Covenant on Economic, Social and Cultural Rights. This, in particular, was adopted by the United Nations General Assembly through GA. Resolution 2200A in 1966 but came into effect 10 years later. The ICESCR (and its Optional Protocol) is part of the International Bill of Human Rights. This Convention guarantees the right to education to everyone and ensures the principles of gender equality and non-discrimination. Such principles are at the core of all fundamental human rights treaties and that is why articles 2 and 3 reinforce the prohibition of discrimination on basis of sex.

Further in the text, the right to education is reaffirmed. Article13 mentions the right of free education for primary level and its progressive introduction in higher levels. Education is seen as an important tool for enabling an effective participation in society and for developing human personality.

It recognizes the need of gratuity being progressive in all levels and the steps that States must follow to guarantee education and the key role of scholarships for disadvantaged groups in order to achieve equality to all on the basis of their capacity.

Afterwards, it states that the parties require to adopt immediately a plan of action to establish free compulsory education. Therefore, it imposes specific duties upon states, regardless of their political, economic, and cultural systems. States have specific obligations that arise from the right to education. Hence must take measures to ensure the progressive achievement of such right for all women and girls.

In conclusion right to education encompasses both entitlements and freedoms, including the:

- right to free and compulsory primary education.
- right to available and accessible secondary education (including technical and vocational education and training), made progressively free.
- right to equal access to higher education on the basis of capacity made progressively free.
- right to fundamental education for those who have not received or completed primary education.
- right to quality education both in public and private schools.
- freedom for parents to choose schools for their children which are in conformity with their religious and moral convictions.
- freedom for individuals and bodies to establish and direct education institutions in conformity with minimum standards established by the state.

- academic freedom for teachers and students.

In International Law there are other conventions that are specific on the matter that could help to further integrate the gender perspective such as The UNESCO Convention against discrimination in Education, which was established in 1960 and has thus far been ratified by 91 states. It prohibits all forms of discrimination in education, including on the basis of sex. This convention considers that discrimination in education is a violation of rights enunciated in that Declaration of human Rights.

It is based on the universal respect for human rights and equality of educational opportunities and treatment for all people in education without regard to race, sex, or any distinctions, economic or social Which is essential in the process of Education. It asserts the principle of non-discrimination, proclaims that every person has the right to education and considers that discrimination in Education is a violation of rights enunciated in that Declaration.

A definition of discrimination and education can be found in Article 1, which is more specific than CEDAW's definition since it applies solely to education, it refers to discrimination in both access to education as well as and quality of education. Discrimination is defined as any distinction, exclusion, limitation or preference on the basis of race, color, sex, language, religion, political or other opinion, origin national or social status, economic status or birth.

Article 3 sets forth precise obligation in all fields and require states to eliminate and prevent discrimination. This article aims at the progressive achievement of equality and despite being a general provision on nondiscrimination it can be transferred to female education and gender equality.

To my view the most important international instrument concerning women's right to Education is the Convention on the Elimination of all Forms of Discrimination Against Women. It is a fundamental weapon to achieve genuine gender equality and the only one which refers exclusively on women's rights thus making an effective contribution to real empowerment for women.

The Convention on the Elimination of all Forms of Discrimination Against Women has the status of a bill of right of women. This international treaty was opened for signature in 1979 and came into force in 1981 to remedy the immediate disparities between men and women in all fields including Education. At the moment 189 countries have ratified or acceded to the Convention, giving it the highest membership of all of the U.N. human rights treaties.

It provides that States parties are responsible for ensuring the equal enjoyment of the right to Education without any discrimination since equality is an essential expression of human rights and to do so they commit to undertake measures to end discrimination against women in all forms.

The right to education has been reaffirmed, in this treaty, as a way to put a stop to discriminatory actions, on the grounds, of sex that take place in educational institutions but it takes differences into account as well. The basic premises of CEDAWs preamble is that "extensive discrimination against women continues to exist" as the preamble states and such discrimination "violates the principles of equality of rights and respect for human dignity"(CEDAW,1979)

The convention defines discrimination against women in article 1 respectively as:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Therefore, all this kind of behaviors are unacceptable. In accordance the preliminary report of the Director-General ,2019 states: “The term ‘discrimination’ obviously denotes a social evil or injustice which should be prevented, remedied or removed”.

When it is comes down to the field of Education, article 10 of CEDAW is the most comprehensive provision on women and girls right to education since this treaty considers the disadvantages and injustices faced by women and the specific need and circumstances of women and girls as well. It affirms women's rights to non-discrimination in education, in accordance with ‘tripartite human rights framework’, which consists of rights of access to education, rights within education, and rights through education. What is more it set out the normative content in relation to the elimination of discrimination against women and ensures equal rights with men in the field of education, including:

- the same conditions for access to studies and diplomas in all educational levels, in both urban and rural areas. It is key to raise awareness on the importance of investing in education, since many girls are forced to leave school while others never have the opportunity to go, in the first place. CEDAW points out and remark on the lack of opportunities and struggles those rural women suffer since in rural areas girls are often force to stay at home to contribute to household work.

- equal access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality.

- the same quality of education from pre-primary to secondary level. Higher education still excludes many women, in particular those from marginalized communities. Progressive policies that support gender equality and equity are needed because, in terms of completion rates, areas of study and enrolment in postgraduate studies gender gap is still prevalent. Under this circumstance positive measures that benefit women and foster quality education, in all levels, are needed.

- the elimination of any stereotyped concept of the roles of men and women. To achieve full equality between men and women, gender-transformative education must be provided. The traditional role of men and women in society has to change. Furthermore, the article 5 stresses

". States parties are obliged to work towards the modification of social and cultural patterns of individual conduct in order to eliminate "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women"(CEDAW,1979).

Instead of changing discriminatory gender norms and practices, schooling, in many societies, contributes to reinforce harmful gender stereotypes and foster the maintaining of assigned roles. The education system sometimes fails at being transformational and plays a substantial role in perpetuating gender stereotypes, which limit women's capacity to develop their personal abilities, instead of combating them. Wrongful gender stereotyping results in a violation of human rights and fundamental freedoms. We can observe that in the class room, there are attributes, characteristics, or roles that are ascribed to women or men, which is a form of discrimination against women.

The Stereotypical view of women solely being able to contribute to housework can prevent parents from investing in girl's education especially in high school, where costs are increasingly high. It is seen as a waste of resources educating girls. In low-income families, boys are favored and prioritized, when it comes to education, while girls stay at home looking after their siblings. In some places, schools do not meet the safety, hygiene or sanitation needs of girls either which is a barrier to girls' education and does not promote gender equality in education.

CEDAW also urges the revision of textbooks and school programs and the adaptation of teaching methods with a view to eliminate stereotyped concepts. Subjects and teaching methods being gendered is a problem of the curricula in most schools and enforce inequality between men and women. If teaching practices are not gender-responsive they result in gender gaps in learning and skills development.

Change is therefore needed to remove gender stereotypes from learning materials as well as focusing teacher training and professional development on gender-responsive pedagogies. It is a fact that Discriminatory teaching practices and education materials also produce gender gaps and School become responsible for transmitting a set of values and differential expectations according to gender. School should contribute to change the traditional role of woman by abolishing usages and customs based on structures of patriarchal authority and subordination.

- The same opportunities to benefit from scholarships

- The reduction of female students drop-out rates and the implementation of programs to encourage women and girls who have left school prematurely to return school. Government should extend free education to eliminate any difference. Programs need to be more inclusive and give girls the same opportunity to attend and complete their Education.

Girls are more likely to suffer from rape, domestic violence, sexual harassment and assault, corporal punishment and female genital mutilation and, as a consequence, dropout rates are bigger. Furthermore, school environment, inadequate and unsafe infrastructure, particularly the lack of toilets and the lack of access to sanitary products are a cause of girls missing schools.

- The same opportunity to participate in sports and physical education. This is essential to foster an environment that will help girls to participate openly and feel encouraged to lead a healthy life. Boys are considered better suited to practice sports and this has the effect of excluding girls from practicing sports professionally on equal terms.

•access to educational information on health, including advice on family planning to prevent early and unintended pregnancies. Teaching reproductive, maternal health and sexual education must be part of any curricula, sometimes girls are cut off from the information and supplies they need to stay healthy and safe which heightens their risk of unintended pregnancy, HIV, AIDS and risk of gender-based violence. Quality education includes comprehensive sex education.

Child marriage is also a common issue in underdeveloped countries which violates girls' right to health and education. This unresolved problem causes student's desertion and exposes girls to violence throughout their lives, and traps them in a cycle of poverty.

States are not allowed to refuse access to school on the basis of pregnancy or marriage. CEDAW aims at the reduction of female student drop-out rates and the organization of programs that allow them to continue their education.

Government is obliged to include advice on family planning in the education process and encourage girls and women who have left school prematurely to reenter education. It is an obligation to enable girls through education to exercise their right to reproductive choice.

An integrated approach, bringing together health, gender and educational initiatives is necessary.

A number of other CEDAW provisions are also relevant to gender equality in education.

Articles 2 and 3 call upon States parties to this convention to undertake all appropriate measures in political, social, economic, and cultural field to eliminate sex-based discrimination against women. This includes both legal and policy measures related to the implementation of the right to education on a non-discriminatory basis. CEDAW has led to substantial changes and reformulations, new laws and regulations that grant greater protection and respect for women and allow them to enjoy their human rights on a basis of equality with men.

Article 4 sets out the conditions for the use of temporary special measures to accelerate de facto equality between men and women. Article 5 requires states to take appropriate measures to eliminate gender stereotyping (prejudices, discriminatory cultural practices, and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women).

Article 7 the right to participate in public and political life. These rights are fundamental in ensuring that gender perspectives are considered when laws, policies, and other measures affecting gender equality in education are designed, formulated, and implemented.

States must abolish all existing discriminatory laws against women and incorporate the principle of equality in their legal system. Tribunals have a key role ensuring effective protection for women and condemning all acts that affect equality

Article 11 provides for the right to vocational training and retraining, including apprenticeships, advanced vocational training, and recurrent training.

Article 14 sets out the right to education of rural women, which includes the right to obtain all types of training and education, formal and non-formal, including that relating to functional literacy.

Lastly, Article 16 sets out the rights of women with respects to marriage and family life. Article 16 expressly prohibits child marriage and requires states to set a minimum age of marriage

CEDAW is monitored by an expert committee namely Committee on the Elimination of All Forms of Discrimination against Women to which states submit regular reports and most signatory countries have opted to ratify the Optional Protocol.

As it has been pointed out, the protection and promotion of equality between women and men and nondiscrimination are recognized as fundamental concepts and cross cutting principles in the major international human rights instruments, including the Convention on the Rights of the Child which has been ratified by every country except the United States. Articles 28 and 29 of this Convention include the right to education mentioned in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and broaden the scope of the protection of the right to education according to the principle of the best interests of the child defined by the Convention.

At a regional level, there is also a number of conventions that proclaim the right to education example include:

®The Charter of Fundamental Rights of the European Union, 2000 enshrines the right to education in article 14. It states that:

## The right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

It guarantees the right to non-discrimination (Article 21) and equality between women and men in (Article 23). Furthermore, its optional protocol prohibits discrimination in education on the basis of sex (The Charter of Fundamental Rights of the European Union, 2000).

®African charter on Human And People' Rights ,1982, states in article 17“ Every individual shall have the right to education, every individual may freely take part in the cultural life of his community and The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State while article 18 compels The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions. In addition, the African Charter on the Rights and Welfare of the Child requires States parties to take special measures to ensure equal access to education for girls and to take special measures to encourage girls, who become pregnant before completing their education, to come back to school.

®The charter of the Organization of the American States establishes that states will give crucial importance, within their development plans, to the encouragement of education, science, technology, culture, oriented toward the overall improvement of the individual, and as a foundation for democracy, social justice, and progress. By signing this charter States have committed to give central importance to the right to education and establish all the political mechanisms necessary to accomplish this aim.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, 1988, guarantee various aspects of the right to education. It prohibits discrimination, under Article 3, and states that everyone has the right to education, under Articles 13 and 16, States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity, and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralist society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.

Last but not least, the right to education, without discrimination of any kind is guaranteed in The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994, known as Convention of Belém do Pará. It includes the right to be ‘educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination’. The Inter-American Democratic Charter calls for the elimination of gender discrimination and states that ‘a quality education be available to all, including girls and women’ (The Inter-American Democratic Charter, 2001).

In the International Community, there are a great number of agents that advocated for female education too. The United Nations Educational, Scientific and Cultural Organization (UNESCO), aimed at promoting women's education. It pursues inclusion of girls through programs, such as education for all. UNESCO sponsors projects that improve literacy among girls, especially in underdeveloped countries, and underlines the critical importance of gender equality in formal education as a fundamental right. Its commitment to gender equality in education is inherent in its mandate to promote education as a human right.

UNESCO promotes the realization of six strategic objectives, related to Education: to ensure equal access to education, to eradicate illiteracy among women, to improve women's access to vocational training, science and technology, and continuing education, develop non-discriminatory education and training, to allocate sufficient resources for and to monitor the implementation of lifelong education and training for girls and women. UNESCO leads a movement called Education for all and coordinates the international efforts to achieve it. A result of this plan of action, is the World's Declaration on Education for all. It was adopted with the Framework for Action to Meet Basic Learning Needs in 1999. It was a result of the contributions from intergovernmental agencies, such as, The United Nations Educational, Scientific and Cultural Organization, United Nations Children's Fund, United Nations Population Fund, United Nations Development Program and World Bank, various foundations and international and non-governmental organizations.

The preamble of the quoted declaration mentions all the persistent obstacles, faced by girls, to access primary schooling, the higher number in illiteracy rates and the effort to meet basic learning needs. It prioritizes the removal of the obstacles that hamper the active participation of girls in education and improvement of its quality.

The international community has adopted Education as a key and fundamental principle to achieving sustainable development. For this reason, was decided in the Education World Forum to join efforts with a common objective: the achievement of the right to education for all by the year 2015. In relation to the right to education, it is worth highlighting objective No. 2 that sets out to universalize education: "before the year 2015 all the boys, and especially the girls and children in difficult situations, have access to free and compulsory primary education of good quality and finish it. "(World bank, 2014)

UNICEF also works to defend girl's right to education promoting policies that benefit them. It creates programs, campaigns and initiatives to expand access to education for girls around the world.

Further in the global community there are a series of actors that encourage girls access and completion of school such as The World Health Organization, The international Labor Organization, The World Bank, among others.

According to researches, around the world there are about 132 girls who are left out of the educational system, including 34.3 million in primary school age, 30 million of lower-secondary school age, and 67.4 million of upper-secondary school age. Conflict aggravates the situation, rate of desertion doubles hence girls are twice as likely to be left out of school than girls living in non-affected countries. Poverty is another contributing factor since 1 in 3 adolescent girls of the poorest households, around the world, has never been to school. Gender disparities are so big that worldwide, nearly 1 in 4 girls between the ages of 15 and 19 are neither employed nor in education or training – compared to 1 in 10 boys.

Only 66 percent of countries have achieved gender parity in primary education. At the secondary level, the gap widens: 45 per cent of countries have achieved gender parity in lower secondary education, and 25 per cent in upper secondary education.

Reflecting years of poor education quality and unmet learning needs, 493 million women are illiterate, accounting for almost two-thirds of the world's illiterates.

**4. Conclusion:** All these statistics proved that, despite the advances in girls' education and the multiple treaties proclaiming equality of rights for men and women, gender disadvantage and discrimination based upon sex persists. We need to raise awareness about the need to take action in order grant women access to education especially underprivileged who remain excluded and are still a neglected group in education. Girl's education is a powerful weapon to achieve equality and full enjoyment of their rights. It is also a strategy for development, if education rates grow, lifetime earnings of girls dramatically increase, national growth rates rise, child marriage rates decline, child mortality rates fall, maternal mortality rates fall, child stunting drops, health, nutrition and life expectancy improve. Consequently, Governments, international development agencies, and non-governmental organizations along with National, regional, and local educational authorities must work cooperatively to ensure access to safe quality, inclusive education for girls and remove all the educational existing disparities.

To sum up, all girls have the right to learn and participate equally and effectively, in safety and free from gender bias. Through education they are empowered to make positive change in society and family so States have legal obligation in compliance with all the signed instruments to remove all discriminatory barriers and to undertake positive measures to bring about equality in education and to improve general access to education thus the international community must turn all principles, stated in the treaties mentioned, into concrete actions and to ensure conditions of real equality for women on Education. They might advocate for the full realization of the right to education and are obligated to amend laws that promote lack of opportunities, sexism, discrimination linked to gender, ignorance and the historical exclusion of girls and women from education. It is an obligation to enact more favorable laws to narrow the existing gap, between the rights set out in national and international standards, in order to eliminate prejudices and customary practices in their educational systems, which are based on supremacy of men, and modify laws that are not in line with the conventions and improve the status of women.



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CECILIA SOLEDAD  
VARGAS  
ADELA PÉREZ DEL VISO  
(Directors)

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